

LOOKING SQUARELY AT THE WATER POWER PROBLEM

OUR refusal to develop our wasting water powers constitutes the strangest feature of our National conduct. For the greater part, our water powers are idly wasting their energy. The reason is that we have not yet been persuaded to enact laws under which money may confidently be invested in them. Until we do this, our water powers will be as useless to us as though situated on another planet.

HENRY J. PIERCE
SEATTLE, WASHINGTON



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*“At every waterfall two angels stay,
One clothed in rainbows, the other veiled in spray.
The first the beauty of the scene reveals,
The last revolves the mighty water wheels,
And there those white-robed sisters ever stand,
Beauty and Utility, hand in hand.”*

LOOKING SQUARELY AT THE WATER POWER PROBLEM

TO MEMBERS OF CONGRESS :

This is a personal appeal for water power legislation. The author confesses that he has an old-fashioned ambition to do a constructive thing—to assist in the creation of an industrial opportunity in a neglected place and to make homes on land now silent. He also cherishes a hope of reasonable and wholesome reward. These are two honorable incentives which have, from the beginning of things, animated individual effort. Some people regard such motives distrustfully but it cannot be believed that such sentiments which, if manifested in an earlier day, would have impeded or stifled our greatest commercial achievements, will long survive in the present day. Therefore, the author will state his case in all frankness and be confident that those who cannot accept his conclusions will have no reason to misconstrue his purpose.

The author is one who, seeing a development opportunity, thought it good and praiseworthy to invest therein. This opportunity comprises agriculture, industrial plants, transportation, cities and towns, homes, schools and churches—in short just that sort of opportunity which, pursued in colonial days, made this Nation an actual thing. All this forward movement is contingent on the development of water power. The wisest commercial minds of the country have endorsed this project, yet the author is unable to raise money for its development. Those who would, under ordinary conditions, gladly lend their money, point to only one vital defect. The power site is on a navigable river and the United States controls the situation, because it has the sovereign right to withhold its approval to any development on navigable waters. The Government cannot and will not make

the development itself, and the Federal laws under which the United States can grant the privilege to private initiative are so restrictive and unbusinesslike that no one is willing to risk his money. This is a strange situation. Believing that it could not logically persist, the author has spent the past two years in a study of the matter, both in Europe and in America. He has conferred with business men, bankers, lawyers, engineers and public officials of all parties and prejudices. The following statement is a resume of the results of that experience. It is sent to Members of Congress and others in authority in the hope that it will be of service.

It is inevitable that the water power question must soon be dealt with by Congress. Unless that dealing is wise and businesslike, the effort will be useless. As will later be shown, the water power business involves a multitude of investment risks. There are nearly 5,000 standard investment securities for sale in the open market. The water power business must compete for money with all of these other standard investments. It ought to be apparent that any water power law under which an invested dollar is inevitably doomed to depreciation will not encourage water power development. If, in considering legislation, our law-makers, while protecting fully the public interest, will at the same time apply the homely and familiar rules of honest business and will searchingly test each section of a legislative bill by determining whether, under the terms proposed, they would be willing to invest their own money, or were they executors of an estate, the money held by them in trust, the path to power development and all its manifold benefits will be greatly smoothed.



PLATE 1a. IN THE NAME OF CONSERVATION.

Navigation dam and power plant at Lock 12, Coosa River, Alabama. The Coosa rapids, 116 miles long, completely obstruct navigation. To give Northwestern Georgia and Eastern Alabama water communication with the ocean the Government engineers planned a series of locks and dams surmounting these rapids, at an estimated cost of \$11,000,000. This one dam in the proposed series was built by private capital and creates 30 miles of deep water navigation where formerly the rapids made the passage of boats impossible. All the others would be so built and the Government would save \$11,000,000, and a great industrial region would be created, if our General Dam Act were changed so as to give investors good security and a fair prospect of reasonable earnings. Private capital wanted to build a dam like this at the Lock 18 on the Coosa. Plates 1b, 1c, 1d and 1e show the result and its consequences.



PLATE 1b. IN THE NAME OF CONSERVATION.

The Lock 18 site on the Coosa River, Alabama—the place where private capital wanted to build a dam like that at Lock 12 (Plate 1a), which would have created 30 miles more of deep water navigation without Government expense. The water power was to be used in the operation of a great nitrogen plant to produce fertilizers for the farmers and explosives for national defense, thereby relieving us from our present dependence on foreign sources of nitrogen. Federal permission was denied, except on terms that would have made financing impossible. Consequently, the Government lost a navigation improvement, the country lost a great industry which would have been a national comfort in these times of war, and the power is still wasting over the reefs of the Coosa. The next three plates show what became of the industry.



PLATE 1c. IN THE NAME OF CONSERVATION.

The Ontario Power Company's plant on the *Canadian side* of Niagara Falls. Built under a license from the Ontario Government running 110 years, with the further provision that the authorities may require the licensee to continue operations for an additional 20 years, making a total of 130 years of tenure. When the United States refused to permit the establishment of the nitrogen industry on the Cossa River at Lock 18 (Plate 1b), Canada was able to take advantage of our so-called "conservation policy" because it had fostered and encouraged the development of this power plant by giving fair and business-like terms to the investor. The nitrogen works which, through adverse Federal legislation, were unable to locate in Alabama, now take their power from this plant. They are located a short distance away on the *Canadian* side and are shown on Plate 1c.

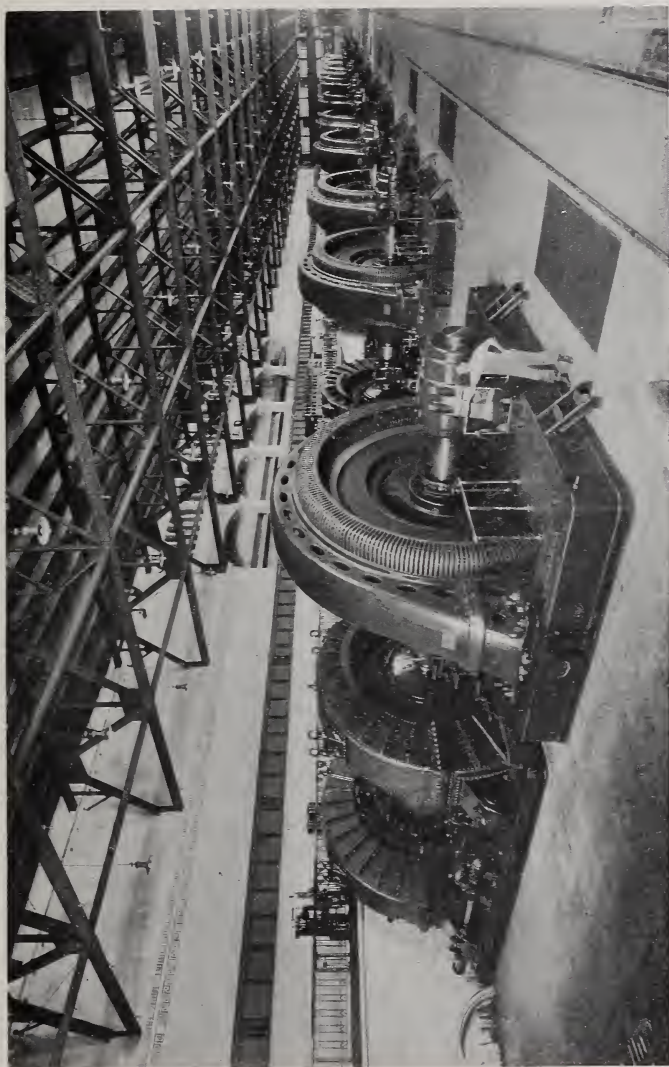


PLATE 1d.

Interior view of power house of the Ontario Power Company, exterior view of which is shown on Plate 1c, maintained on Canadian soil largely by the annual tribute paid by American farmers for nitrate fertilizers.

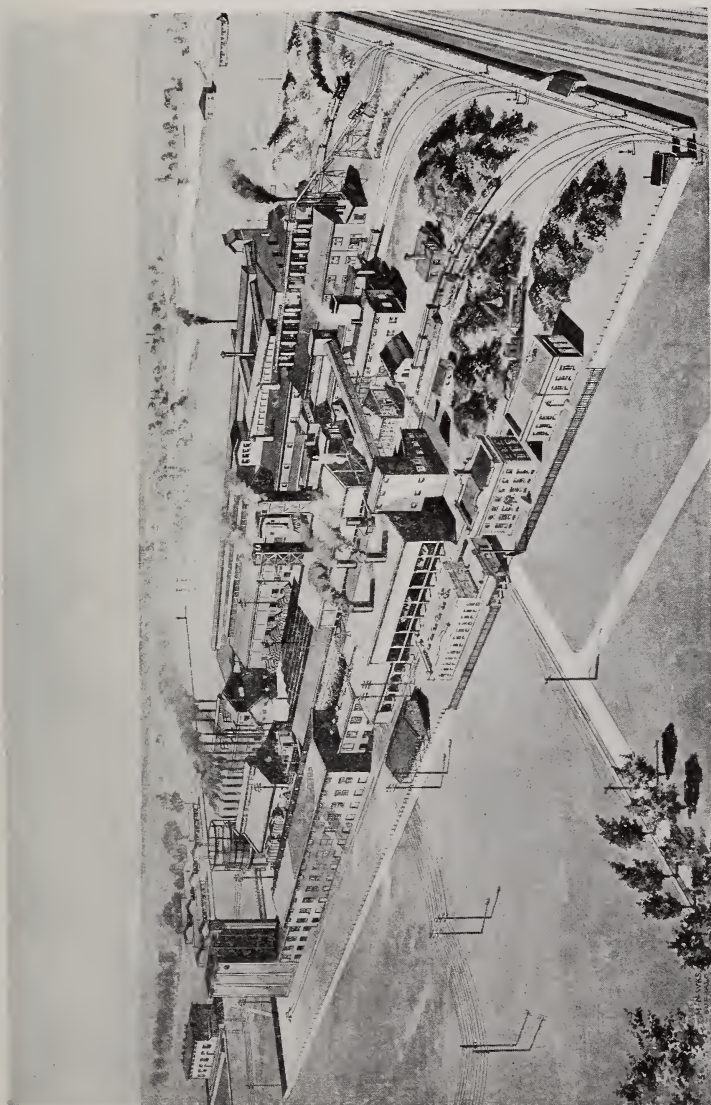


PLATE Ie. IN THE NAME OF CONSERVATION.

This is the nitrogen plant of the American Cyanamide Company which was to have been established at or near Lock 18 on the Coosa River in Alabama, but which after having been rejected by the United States, found welcome on the Canadian side of Niagara Falls. There it is making fertilizers for importation into the United States, and being under the British flag, it is available for the defense of the Empire.

HOW THE NATION IS CONCERNED

To foster and encourage water power development is a National duty. This is so for two reasons: First, every bit of material progress that the world has made has been the result of man's using some form of energy, and the greater and better and cheaper the energy, the greater and better has been the progress; second, water power is our greatest and best and usually our cheapest source of energy. In this country, our water powers are our greatest natural resource. Much of that power now wasting to the sea could be developed for our immediate benefit. No man can claim that he is unconcerned, for the cost of his food and his clothing, the comfort of his shelter and the convenience and facility of his journeyings are all prejudicially affected by the failure to develop water power to the utmost limit of its usefulness. The fact that in some regions there may be no water power opportunity does not alter the foregoing, because even in such places the price of the things that man consumes or uses in his everyday life is controlled by the price at which those things can be produced under the best and cheapest of conditions. The farmer on the Kansas prairie is as much concerned with water power development as is the manufacturer at the Falls of Niagara.

Let us consider the farmer. His principal commercial interest is in his crops. He is needing more and more fertilizer. Try as he will, he does not make his fields produce the values that farms do in Great Britain or France, in Germany, Belgium, Holland, Sweden or Norway. Why is it that the fields of Great Britain produce two and one-half times as much wheat per acre as do those in the United States? Why is it that on an acre of land, the Dutch farmer produces twice as much barley, the Belgian farmer twice

as much oats and the German farmer nearly twice as much rye as does the American farmer on his fields? The answer is fertilizer. German experiments have shown that by the addition of 2,075,000 tons of nitrogen to the soil of the Empire, additional crops have been obtained amounting to 63,300,000 tons. Does this suggest anything concerning the cost of living? Let us compare the use of fertilizer in four different countries in 1911:

<i>Country</i>	<i>Lbs. of fertilizer used per acre of improved land</i>
Belgium	448
Germany	214
Great Britain	152
United States	28

The foregoing statement does not show up very well for the United States, yet that little 28 pounds per acre meant the consumption of 6,800,970 tons of fertilizer in 1913, for which the farmer paid \$170,000,000. In that year, our importation of fertilizer ingredients amounted to \$49,622,000. Where are we going to get our fertilizer when we boost our crop yields up to the level of Great Britain, Germany and Belgium? Boost we must, for our population is increasing, and it will easily mean an annual consumption of 50,000,000 tons of fertilizer. More detailed information concerning fertilizer and its ingredients and manufacture will be given in a subsequent chapter. The immediate purpose is to emphasize the fact that even under the present limited use of fertilizer, we are unable to produce all that we require and are obliged to make large importations; that there is no need for importing any nitrogen because if Federal water power laws could be passed which will suitably provide a safe financial basis of investment, all the fertilizer that the country requires and much more for export purposes can be cheaply made by utilizing our

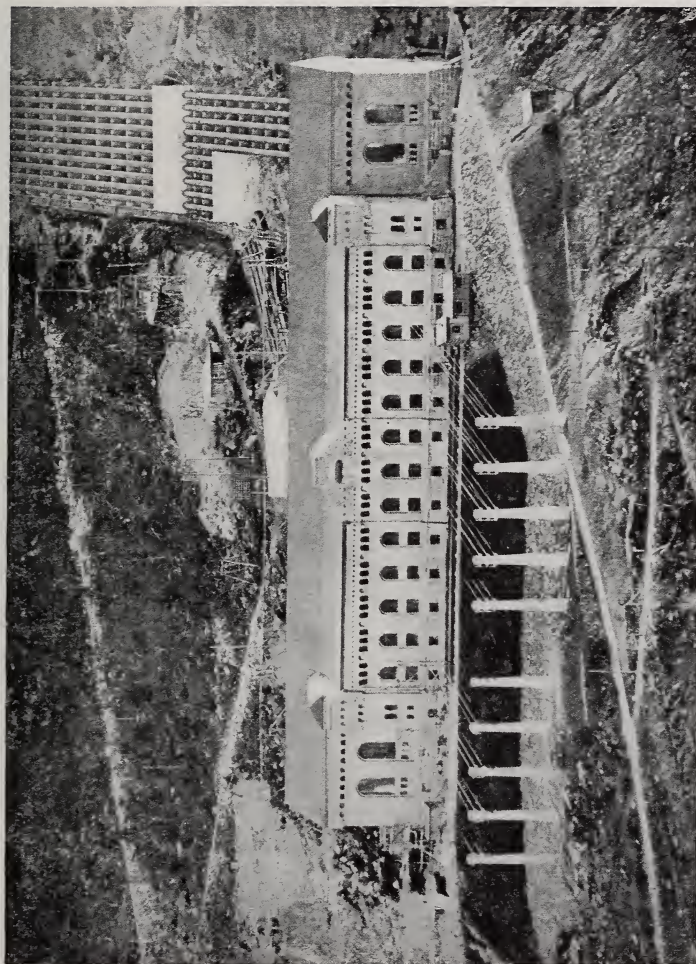


PLATE IIa. THE RJUKAN POWER PLANT AT VEMORK, NORWAY.

This plant develops 300,000 horsepower which is used in the nitrogen plant shown on Plate IIb. The Government grant for this plant is perpetual and the rental is \$0.27 per horsepower year. Why should we retain laws which prevent the manufacture in the United States of all the fertilizer our farmers require?



PLATE IIb. THE NITROGEN PLANT AT SAARHEIM, NORWAY.

This is the nitrogen plant served by the Kjukkan power development (Plate IIa). In seven years a town of 8,000 people has grown up around this plant. The fertilizer which some of our farmers use comes from this plant.

water powers to extract nitrogen from the air. So it is that the farmer is enormously interested in water power from the fertilizer standpoint, and because this interest has to do with food production, every citizen of the country is likewise affected.

But the farmer's interest does not stop with fertilizer. As will subsequently be explained, it extends to irrigation in the arid West, to the transportation of farm products and farm supplies, including implements and clothing; and in the water power regions, the farmer's interest extends to hydro-electric energy in farming operations. In like manner, we might consider every other vocation and show how closely water power benefits in a large degree control them. Water power is an individual matter, a community matter, a national matter and, finally, the most important commercial matter now before the people. The water power is ours to develop if we only will. The farmer who indulges in day dreams when he should be harvesting crops is not highly regarded by the community. What then shall be said of the Nation that follows a similar practice with respect to water power development?

Wherever the United States has control, water power development is stagnant. This fact is well known by all who are conversant with the situation, and it has been officially announced by members of the Cabinet and members of both Houses of Congress on many occasions. It means that under present laws it is practically impossible to develop water power sites that exist on the navigable streams of the country or on the public lands of the West. Water power sites on the navigable streams do not belong to the Government except in those very rare cases where land has been acquired by the Government for purposes of navigation. The land is, as a rule, in private ownership, and under the "Riparian Doctrine," which prevails in the East, the ownership of land carries with it the right to use the water in the adjacent navigable

streams. Such use, however, is contingent upon the paramount use of the streams for navigation, and as the Federal Government has supreme authority over navigation in our rivers, it follows that no obstruction such as a dam or any other water power structure can be placed in such a stream without the consent of the Federal Government. Therefore, the Government is in supreme control, though not necessarily owning a foot of land. The United States controls power sites of the West in enormous aggregate capacity through ownership of land. The control is, therefore, not begotten of sovereign authority, as in the case of navigable streams, but is precisely the same as that which any individual would possess who owned land necessary to a water power development. The situation is further complicated by the fact that these Western lands of the Government do not usually carry rights to the use of water in adjoining streams, as is the case under the Riparian Doctrine of the East, but such rights are acquired under what is known as the Doctrine of Prior Appropriation, which means essentially that he who first appropriates the water and applies it to a beneficial use secures a vested right therein (so long as, and to the extent it is actually used) which can be exercised to the detriment, if need be, of those who made subsequent water appropriations. The water of the Western streams belongs to the States and not to the Federal Government, and the fact that the latter holds title to the land does not give it sovereign or even proprietary control over the waters. In practically all the arid States, the holder of a State water appropriation can, where physical conditions permit, divert the water from and carry it around Government, or any other land, and use it for all public beneficial purposes, but without the State water appropriation, the mere ownership of land by the Government, or anyone else, gives of itself absolutely no right to appropriate the State's water. The water, therefore, is the important thing and in all developments involving

water appropriations the land is appurtenant to the water right, which is quite the reverse of the situation in the East where, under the Riparian Doctrine, water is appurtenant to the land.

There is a strange contradiction in the present Federal policy with respect to Western development and Federal laws providing for the occupation of Western lands and conveying rights of way over them, discriminate against water power development. Land for railroad purposes can be secured merely by constructing the railroad; land for county roads and highways is freely given; land for irrigation ditches can be acquired merely for the asking. Under the so-called "Carey Act," millions of acres have been turned over to the States and thence to private citizens on the sole condition that they shall be reclaimed. It is only in case land is wanted for water power development that the laws close down and say, "No, you cannot get titles to this land at any price and you cannot use it except on terms that make financing of your project impossible." It makes no difference if the right-of-way for power purposes over Government land is required by the State, a municipality, an irrigation district or an individual; it makes no difference whether the power is for a public use and is to be developed under complete sovereign control or is for a private use; it makes no difference how vital the development may be for the prosperity and general well-being of a struggling Western community—the strong hand of might says, "No; nothing doing." There surely can be nothing discreditable in the attempt to develop water power. Indeed, its benefits are in many cases more widely distributed than those of any other line of development. Yet the door is closed.

Some have said that there is no water power stagnation and in their attempts to prove their statements, they point to large power developments that have taken place in this country during the past few years. A little inquiry will, however, develop the fact

that these recent developments have almost all occurred on private lands or in situations over which the Federal Government has no control. Is it not a humiliating fact that if one desires to develop a modern industry, to increase and to facilitate public service and public convenience, to give employment to idle hands and to accomplish all of the other beneficial things that are a part of national progress, he must, under present laws and policies, carefully avoid all of those sites and locations which are, even in the smallest degree, in the ownership and control of the Federal Government?

Conservation has often been defined as "wise use." The present embargo on water power development is maintained in the name of Conservation. The President must have had this and related facts in mind when, in his address to the Sixty-third Congress at the opening of its Third Session in December, 1914, he made this statement:

"We have year after year debated, without end or conclusion, the best policy to pursue with regard to the use of the ores and forests and water powers of our national domain in the rich States of the West, when we should have acted; and they are still locked up. The key is still turned upon them, the door shut fast at which thousands of vigorous men, full of initiative, knock clamorously for admittance. The water power of our navigable streams outside the national domain also, even in the Eastern States, where we have worked and planned for generations, is still not used as it might be, because we will and we won't; because the laws we have made do not intelligently balance encouragement against restraint. We withhold by regulation."

We may possess the highest and most devoted faith in the principles of Conservation and at the same time concur in the statement made by former President Taft to the Third Conservation Congress in 1912, as follows:

"I am bound to say that the time has come for a halt in general rhapsodies over Conservation, making the word mean every known good in the world; for after the public attention has been roused, such appeals are of doubtful utility and do not direct the public to the



PLATE IIIa. IS THIS CONSERVATION?

A Denver and Rio Grande Railroad train crossing the divide at Soldier's Summit in Utah. Eight passenger cars and three baggage and mail cars are drawn by five steam locomotives, using coal—an exhaustible resource. A few miles away on the Green River is a water power site that could be used to save this coal, but the power is wasting into the ocean because our laws do not permit of water power development. What are we going to do about it?



PLATE IIIb. THIS IS CONSERVATION.

An ore train on the Butte, Anaconda and Pacific Railway, operated by hydro-electric power. There are sixty-five loaded cars, with total weight 4,700 tons, drawn up a steep grade by two 70-ton locomotives. The power is taken from the wires of a public service corporation. See page 21 for further description; also contrast this with Plate IIIa.

specific course that the people should take, or have their legislators take, in order to promote the cause of Conservation. The arousing of emotions on a subject like this, which has only dim outlines in the minds of the people affected, after a while ceases to be useful, and the whole movement will, if promoted on these lines, die for want of practical direction and of demonstration to the people that practical reforms are intended * * *."

THE PRACTICAL SIDE OF THE QUESTION

The following estimate taken from the U. S. Geological Survey Report of 1909 shows the available water horsepower in the different sections of the United States, if developed to the practicable maximum without storage:

North Atlantic States	4,910,000
South Atlantic States	5,107,000
North Central States	4,270,000
South Central States	3,342,000
Western States	44,049,000

Total available potential horsepower...61,678,000

It is also estimated that with practicable maximum storage, the total available water horsepower that could be produced in the United States would be 200,000,000. The present actual water power development in the United States is about 6,000,000 horsepower, or 1-10th of the amount available without storage and 1-30th of the amount available with storage.

The Geological Survey Report for the year 1913 shows that our consumption of coal for all purposes was about 570,048,125 short tons, of which the railroads alone used about 20 per cent. In addition to this, the petroleum used in 1913 was equivalent to 24,000,000 tons of coal. Every water horsepower now going to waste which could be economically substituted for fuel power would represent approximately $5\frac{1}{2}$ tons of coal per year, based on an average of 12 hours per day. To indicate what are the possibilities of conservation along this line, we need merely to reflect upon the fact that the ultimate development of 61,678,000 horse

power on the foregoing coal consumption basis, is equivalent to the annual use of nearly 340,000,000 tons of coal, which at \$2.00 per ton, represents an annual value of \$680,000,000. Under conditions of practicable maximum storage, and a development of 200,000,000 horse power, the equivalent would be 1,200,000,000 tons of coal, and \$2,400,000,000 annually. If all the water at these power sites were used constantly, the foregoing coal consumption figures would be doubled. Of course, this represents the maximum attainable development, which, in all probability, will not be approached for a long period, but it also represents the end which may finally be achieved. It is certain, however, that unless a start is made by the enactment of fair and practical legislation, efforts to accomplish this much to be desired result, even in small part, will fail. Does not the possibility of so tremendous a saving of our exhaustible coal supply suggest that the attitude of the Government should at least be more than sympathetic toward the development of our water powers? Every undeveloped water power for which a market now exists represents a willful waste of an exhaustible natural resource.

Conservation, about which we have heard so much, does not mean merely the wise and economical use of a resource like coal. It means the saving of that exhaustible store in all places where an inexhaustible resource, like water power, can be substituted for coal. Every time the United States has, by the exercise of its present policy of stagnation, prevented the development of a water power, it has not alone prevented the growth of cities, or the making of homes on the land; not alone has it discouraged the expansion of industries or driven them to other lands. These results, unfortunate and unrighteous as they are, could be compensated in some degree by wholesome legislative penitence in the future. But all the penitence that a great nation can possibly show cannot replace one atom of the thousands of millions of tons of coal that

have been ruthlessly burned while that nation, in the name of Conservation, has placed its water powers beyond the reach of individual enterprise, where the thoughtful investor and the prudent guardian of trust funds must look upon them with suspicion or scorn.

The electrical energy produced through the development of our water powers will find many markets, among which are the following:

The Electric Furnace.—Marvelous new processes involving the use of the electric furnace have been perfected within the past few years. Over 1,200,000 horsepower has been developed in Norway, Sweden and other European countries for the fixation of atmospheric nitrogen in the form of nitrate of lime, nitrate of soda and cyanamid, which products are used in the manufacture of fertilizers, explosives, cyanides and other needful products. There has been positively no development of the kind in this country because our great water powers cannot be financed under present laws. The United States imported during 1913 nitrogenous products to the value of over \$44,000,000. These were composed of Chilian nitrate of soda to the value of \$23,000,000, the remainder of manufactured nitrogenous products coming from Germany and other countries. We have long been dependent on Chili for the greater part of our nitrogen, and we have paid the price fixed by an absolute monopoly known as the "Nitrate Board." This is a European organization. To manufacture nitrogen from the air in amount equivalent to that imported from Chili in 1913 would require 1,100,000 horsepower. To this extent then have we fostered the equivalent of a water power monopoly over which we can have absolutely no control. It is estimated that the richer deposits of Chilian nitrate of soda will be exhausted within twenty years and then the world will have to depend upon the fixation of atmospheric nitrogen for its supply. Thus there is opportunity to build up a

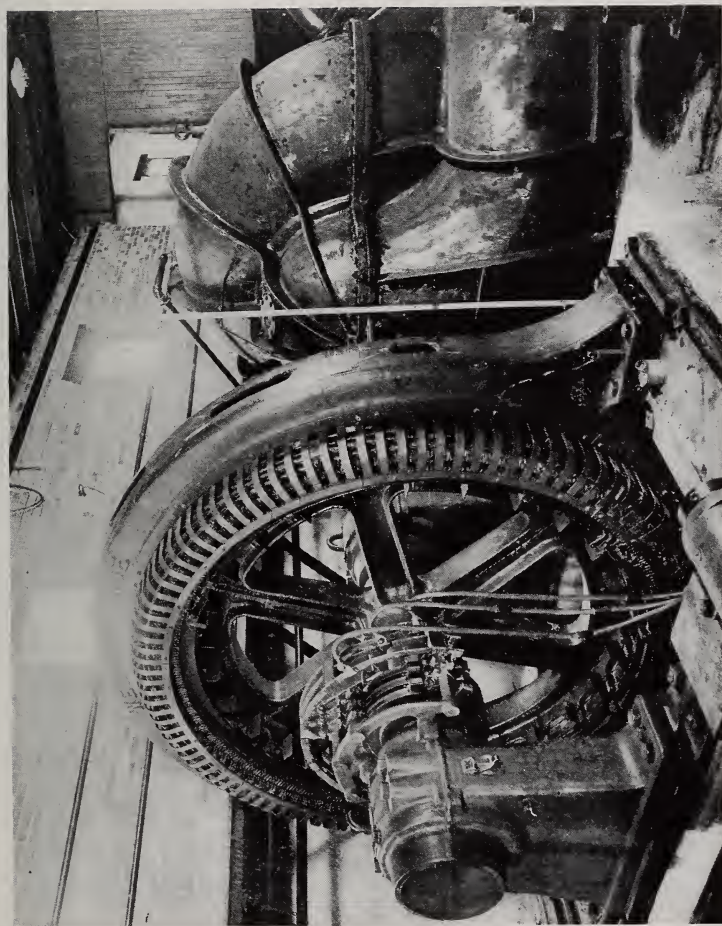


PLATE IV. WATER POWER AND IRRIGATION.

Motor and pump in the plant of the Consolidated Canals Company, Lehi, Utah. This pump and others in the adjoining pump house are driven by hydro-electric power and 60,000 acres are supplied with water for irrigation purposes. The power is taken from the wires of a public service corporation.

great nitrogen industry in the United States which would require enormous quantities of electrical energy and which would free the United States from being dependent upon foreign countries for its supply of this tremendously important product. By failing to develop this industry, we not only inflict upon ourselves a dependent condition, but we contribute largely to the enrichment of foreign countries, which, in their wisdom, have fostered and encouraged the nitrogen industry.

Nitrogen (saltpeter) is the basis of explosives and from the standpoint of National defense it is imperative that the product should be made within this country. The fact that nitrogen is not manufactured in the United States would prove of serious moment in case of war. In urging the necessity for building plants for the manufacture of nitrogen through the fixation of atmospheric nitrogen, military authorities have urged that the plants be so strategically located throughout the country as to be well protected against attack from foreign invasion from any quarter. Realizing this precarious situation, the War Department has for some years been trying to accumulate a reserve store of 65,000,000 pounds of Chilian nitrates. That is, the Department has been forced to buy from interests that may be hostile the very elements necessary for defense of our Nation. The Army and Navy use annually over 6,000,000 pounds of this material in times of peace. Our ideas concerning the consumption of war munitions have been changed during the great crisis of the past year. We know that modern offense or defense is largely a matter of the efficient use of amounts of explosives undreamed of in wars past. In a prolonged war our store of 65,000,000 pounds of sodium nitrate would not go far. In a war such as is now raging in Europe this supply would probably last much less than one week. With a coast blockaded, we would find importations of nitrogen difficult or impossible. Our crops would have to be appropriated and our fields would have to be

devastated to secure that needful element; and all this at enormous cost, and delay to the Government. Water power development will solve this difficulty, but it should be remembered that the construction and equipment of water powers and nitrogen plants require years. They must be ready for service at the onset of war.

A quantity of phosphoric acid, greater even than that of nitrogen, is used in the manufacture of fertilizers. Fortunately there are enormous deposits of phosphate rock, both in the Southern and Northwestern States. By an electric furnace process recently perfected, phosphoric acid may be produced through the treatment of phosphate rock cheaper than by ordinary methods. Here is another great use for hydro-electric power.

The electric furnace is being more and more used in metallurgy. We in the United States are far behind Europe in this respect, but it is apparent that with the development of cheap hydro-electric power, great amounts of electricity will be used in the treatment of ores and in the manufacture of steel.

Hydro-electric energy will be largely used for two great agricultural purposes—in the manufacture of electro fertilizers and in the operation of pumping plants to convey water to the higher arid lands of the West. In many cases, large areas of the richest lands lie above the reach of gravity water. In many other cases the conditions are such that irrigation with pumped water is cheaper and more practicable than irrigation by gravity water. Indeed, the cheaper gravity irrigation propositions of the West have been largely developed. The great irrigation development of the future will take place in those localities where the streams of the West not only furnish water for agricultural purposes, but also furnish the power with which to raise that water to the thirsty lands. There is also a great field in the use of hydro-electric power for pumping underground waters to arid fields, which underground water would otherwise be unavailable for this purpose.

Transportation.—The marvelous financial and operating success of railway electrification on the Butte, Anaconda and Pacific Railway in Montana furnishes a most powerful argument in favor of hydro-electric development and it shows that if by the adoption of a sound and sane water power policy, the electrification of railroads, especially in the West, can be accomplished, the transportation benefits alone will be sufficient to warrant speedy legislative action to that end. This railroad, which is largely devoted to the transportation of copper ore, has about 90 miles of electrified track. Electrification has brought about a reduction of 75 per cent in operating delays, an increase of 8.77 per cent in ton-miles hauled per annum, and a decrease in annual operating expenses of \$268,728.12, or 36 per cent. This annual saving is equivalent to about 20 per cent of the total cost of railroad electrification. In the year 1913 this road was operated under steam traction and the cost of coal alone was \$315,235.74, while in 1914, under electric traction, the cost of delivered electric power was only \$164,508.70, a decrease of 47.81 per cent.

The Chicago, Milwaukee & St. Paul Railroad Company is now electrifying a 450-mile stretch of its transcontinental road between Harlowton, Montana, and Avery, Idaho. It has contracted to pay \$550,000 per annum for delivered electric motive power, as against the present cost for coal over the same line, approximating \$1,750,000 per year. Under the new development, this coal will be saved and the water power, a product that has gone to waste from the beginning of time, will be utilized. It has been credibly stated that one-third of the freight equipment of this and other Western mountain roads is necessarily employed in hauling coal for the railway companies' use. Electrification will release this costly equipment for more useful purposes. The successful completion of the electrification of this 450 miles of line is sure to be followed by similar electrification of hundreds of

miles of the mountain divisions of other railroads of the West if suitable water power laws are enacted. It may be remarked that no part of the water power sites at the Great Falls of the Missouri and at Thompson's Falls on Clark's Fork, which will supply the Chicago, Milwaukee & St. Paul Railroad with power, are owned or in any way controlled by the Federal Government. If they had been these great developments in transportation could not have been financed and could not have taken place.

The foregoing are merely a few examples which show that new uses and new markets are created for electrical energy, if only the tenures are permanent and safe, and the size and cheapness of development are such as to make reasonable profits possible at unusually low selling costs. Every practical man of wide experience in this business knows that the permanency and safety of the investment mean more and cheaper development capital—and perhaps to most of us determines the ability to get the capital—and that in turn the cost of capital is by far the most important element in the water power business.

Water power development in different parts of the country is already projected to the extent of more than a hundred million dollars. That development only awaits the passage of water power legislation by Congress under which capital may be safely provided for construction purposes.

In New England, a great power on the Connecticut River would be utilized, adding largely to the navigable reaches of that stream and furnishing power for industrial purposes. Great water powers in the Columbia Basin would be developed, making possible the navigation of those streams far into the interior and furnishing power for the manufacture of fertilizer, the operation of pumping plants for the raising of water to vast tracts of land, and for transportation and municipal purposes. Water powers now latent in the Tennessee, the Coosa and other Southern rivers and also those



PLATE V. A GLIMPSE AT WHAT MIGHT BE.

Irrigation at Green River, Utah. This land lies along the Green River, and is irrigated by gravity flow. Adjoining, and higher up, are 150,000 acres of better soil that could readily be irrigated by pumped water. A little way up Green River is a fine power site on Government land, but it can not be developed under present laws, and so this great area of volcanic ash soil must remain a desert. Would not the reclamation of this area help to decrease the cost of living? Shall the law be changed?

in the upper reaches of the Mississippi River would be developed with similar beneficial results. In the mountain streams of the West there are enormous water power resources. Even in the more level States where water powers have heretofore been given little consideration, investigations have shown that good opportunities exist. All of this being true, it is manifest that water power legislation cannot be considered a local or a sectional matter and it lies far above the realm of politics and the prejudices of men.

WHAT ARE WE QUARRRELING ABOUT?

More than one man who has, with open mind, investigated this national water power controversy, has closed his review by asking, "What are they quarreling about?" Here is a controversy of about eight years' standing, which has prevented economic development in the United States to the extent of hundreds of millions of dollars. It has caused and is causing sectional discontent and suspicion where nothing but harmony and industrial co-operation should prevail. Some entire States feel that they are harshly and inconsiderately treated by the Federal Government—that they are being strangled by the *hand of might*. There is a widespread contention that the Western water power States are being denied the sovereignty to which they are entitled under the Federal Constitution, and are having their growth impeded and are being impoverished because such large proportions of the lands in such States are withdrawn by the Federal Government for water power purposes. Such lands are not subject to local taxation, although the communities and States are burdened with the maintenance of the law on those withdrawn lands. There is bitter complaint that although those lands were withdrawn from sale or entry under the pretext that they would thereby be rendered readily available for power purposes and thus their use for such purposes would be facilitated and encouraged, yet present laws make it impossible to use them—laws of fulsome promise but of deadly effect.

Such are the consequences. Yet strangely enough the real differences between the contending parties are so small that it seems as if an hour's consideration by full-grown men ought to remove all cause of controversy. Therefore, is it not time that the leaders on both sides pause for a while and reason a little? Per-

haps it will be found that some are continuing the quarrel merely from force of habit. Well, then, what are we quarreling about?

Merely for convenience, we will call one side "Theory" and the other side "Practice." The conference would run substantially as follows :

Theory—"You water power people can't have any more perpetual permits to build and operate dams on navigable streams, nor can you have any more fee titles to public lands which involve water power sites."

Practice—"All right; we gave up expecting such things long ago and have planned accordingly in our calculations for the future. We had supposed the policy was all settled; why do you keep on making speeches about it?"

Theory—"Water powers must be developed under a permit or some form of term grant running, say, 50 years, after which the people must have the right to take over the property."

Practice—"Are you going to pay us for the property when you take it over?"

Theory—"Certainly, we shall pay the fair value."

Practice—"Good scheme—we're all agreed."

Theory—"But we are going to pay you only for the fair value of the property, and for no blue-sky stuff, like capitalized value of the permit and the Government lands occupied, goodwill, profits that you expect to get from contracts, nor anything that is not actually put into the property as a hard cash investment or its equivalent."

Practice—"All right again—don't want to be paid for any blue-sky stuff."

Theory—"And we want you to make prompt develop-

ment of the properties under permit and not to hold them unused for speculative purposes."

Practice—"Of course, we agree, and even if we didn't the fact would still remain that money is too scarce and too valuable to throw around and leave idle in such a manner, even for speculative purposes."

Theory—"There shall be no artificial manipulation of things, nor any jockeying to the end that the consumers' rates shall be raised or that service be deficient or discriminatory."

Practice—"No; such things should not be. Under modern practice, the power business must be conducted on the large-volume and small-profit plan, which necessitates low rates and equal service. But even if this were not so, public regulation through commissions now established in nearly every State of the Union will prevent high rates and discriminatory service."

Theory—"Your consumers' rates should be as low as is commensurate with a reasonable return to the capital actually invested, irrespective of stock issued."

Practice—"Certainly—just a reasonable return on the actual cash value of the property. The stock issued has nothing to do with the case, and is to be disregarded entirely, no matter whether it be represented by actual face value in the plant, or be watered to a million times that amount. This 'reasonable return on the fair value' idea, regardless of stocks or bonds, is universally an established principle in public utility regulation. A reasonable return has been well defined as the lowest return that will induce investors to purchase the securities of any particular investment. A larger return is unreasonable, and a smaller return will fail to get the investment capital. The

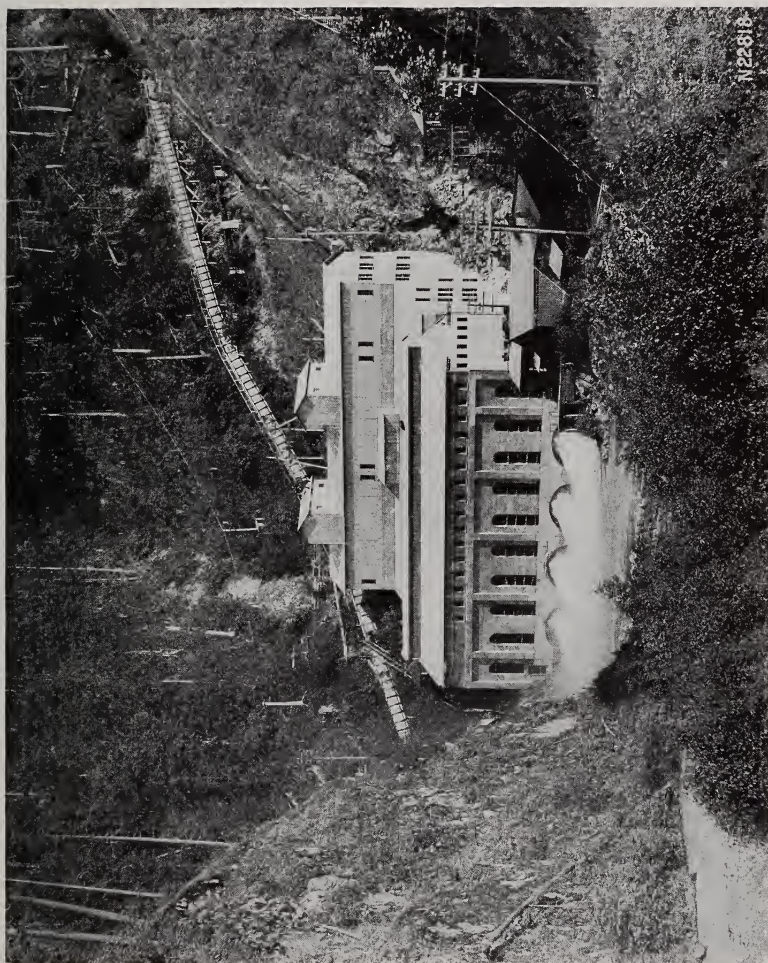


PLATE VI. THE ELECTRON POWER PLANT ON PUYALLUP RIVER, WASHINGTON.
18,600 HORSEPOWER.

A typical Western high-head power development, the energy from which is devoted to public service. There are hundreds of undeveloped sites similar to this on the Public Domain, but they are useless under present laws.

only complaint that we have is that some of you people have selected public-land and navigable-stream power plants as subjects for strict regulation by the Federal Government, but you do not propose to exercise such regulation over plants that happen to be located on private lands. Regulation is a great and necessary institution; it should be exercised indiscriminately and not concentrated on projects that happen to be located on sites either owned or controlled by the Federal Government. Private land plants and Government land plants should operate under exactly the same burdens and same laws."

Theory—"For all Government property occupied or used you shall pay a fair rental or charge during all the years of the permit."

Practice—"All right, suit yourself about that. So long as you don't place your charges high enough to make it impossible to compete with gas or steam power, or with other water powers over which the Government has no jurisdiction, and so long as we know the amount of the charge clear through to the expiration of the grant, we are quite indifferent in the matter. You should bear in mind, however, that in the last analysis every burden placed upon a water power plant in public service which occupies a right of way over Government land is, and must necessarily be, passed on to and paid for by the consuming public. There is no other place for such money to come from. Every burden put upon such consuming public, beyond the fair value (for all purposes) of the Government land so used constitutes merely an unjust charge by the National Government (*not upon the public service company but upon the consuming public*) in an amount which would not for a moment be countenanced

by a jury or a court of equity if a private citizen owned the same land and was in court asking for adequate compensation for the use of such land by the public."

Theory—"You practical men talk as though you believe that we conservationists are trying to lock up all the water power sites and prevent their use. Don't you know that we realize as well as you do that the present enormous amount of water power going to waste is lost forever; that 'the mill will never grind with the water that is past?'"

Practice—"Well, it was you conservationists who stopped the wheels of progress in water power development. Why don't you start them again and stop the great waste from which the country is now suffering? Let development proceed and incidentally save our non-replaceable fuel."

Theory—"That is exactly what we have been trying to do, but you practical fellows are too fussy and critical concerning our Department rules and of the bills that we have had introduced into Congress."

Practice—"Why should the investor not be afraid of placing his money under the absolute control of a Federal department when the laws now in effect do not allow the department heads to make water power agreements which will bind the Government or create property rights even though \$1,000,000,000 may be invested in a plant. Have you forgotten the large number of permits that were arbitrarily revoked notwithstanding the fact that the permittees had not violated law or regulation? Have you overlooked the fact that a large number of consequent ejectment suits are now pending in the United States courts which, if successful, will, in effect, confiscate about \$100,000,000 worth of property, some of which was built many years

ago on the faith that Government permits were unquestionably secure?"

Theory—"Those revocations were and are great mistakes. We believe in government by law and not by individual discretion. We believe that every dollar devoted to a public use, to serve the people with water power or anything else, should be protected by the strong arm of the Government—that the good faith of the Government should be pledged in the strongest language possible to protect all servants of the people who do their duty honestly and efficiently."

Practice—"That is right, but your suggested laws do not accomplish this purpose; they are not practical; they shackle and impede your public servants so that it is impossible to serve the people well, efficiently, or, perhaps, at all. Why do you continue to pile on harsh and burdensome requirements and uncertainties which do not apply in any respect to public servants on privately owned lands; which add to the cost of money, which increase operating expenses and which prevent lower rates to the people? Don't you know that all this prevents development, injures the whole country and benefits no one?"

Theory—"No; such results are not desired nor intended. We are not advocating these things as a means of securing revenue for the Federal Government beyond a fair return on the reasonable value of its lands for all purposes. We want, however, to be sure that you water power men do not abuse the public nor extort unreasonable profits from the people."

Practice—"That is entirely proper; but the things of which we complain have nothing whatever to do with determining the reasonableness or unreasonableness of rates or the quality or conditions of the service. We are objecting

to special burdens applying to power sites under Government control and not to all power sites alike; to the things that benefit no one and yet either prevent development or increase the cost of service to the people. Why is not regulation and protection the only practical way to get the best service, to secure investment capital and to confine profits to a reasonable return on that capital?"

Theory—"That is all right, but how do we know that regulation will always be effective unless the departments in Washington can at all times keep a strangle hold on the public service corporations in the States and make them be good."

Practice—"There you go again, back to government by the individual and at the discretion of an appointive Federal officer—subjecting millions of the people's savings to the ever-changing personnel of a Federal office and to the individual preferences and whims of the Federal officer for the time being. That is exactly the present state of affairs; that was exactly what resulted in the large number of permit revocations in the past and the subsequent ejectment suits. You know that capital is now shunning power developments where Federal authority is involved. A burned child dreads the fire."

Theory—"We agree that regulation, if effective, will remedy all these things and will make it safe to enact a short law putting the power sites now under Government authority upon just as favorable a basis as those on private lands. We want the largest and best power development and we want it now. We are willing to put the public land developments on even a more favorable status than those on private land if this is necessary to accomplish the de-

velopment. But how can we be sure that regulation will be honest and effective?"

Practice—"Practically every State now regulates its public servants and this will soon be universal. The people have the power to regulate and cannot divest themselves of that power. Who are most interested in the development of power and in the quality and conditions of the service and in the rates charged?"

Theory—"The people who use the service and pay the bills, of course."

Practice—"Certainly, it is the consuming public that has a direct personal interest at stake. If their public service commissioners do not do their duty, it is in the people's power to get new commissioners. If the local law regarding such matters is defective, the public can change it. Some of the proposed Federal laws on this subject have apparently been framed with the idea that it is wrong to secure the greatest possible development and the least possible rates to the public. They have been framed with the idea of maintaining rates that will produce fancy profits and to divide those profits with the Federal Government. If this is not done, but, on the contrary, the consuming public is allowed to regulate the rates that they pay, and if they are allowed to take all the benefits that arise from the securing of cheap money, large volume of business, interconnection of power systems, etc., don't you think that human nature is such that the consuming public can be trusted to get for themselves every such benefit over and above such reasonable return as is necessary to get the investment capital in any particular case?"

Theory—"You are right. Besides, if any particular community or State has large and cheap water power re-

sources, it would not be fair to take away from that community or State the inherent advantage given it as a birth-right by denying the fullest right to the lowest possible rates to its industries and people so as to secure for them all the benefits over and above a fair return on the invested capital."

Practice—"It has been proved over and over again that the lower and more stable the rates, the greater the industrial development in any particular community and the safer the capital—one thing helps another. This plan means more volume of business and more and cheaper money and more development. The Federal tax or the scheme whereby fancy profits are divided with the Federal Treasury means the reverse, and besides, it stunts the growth of those communities by robbing them of their natural advantages."

Theory—"But all the while your books and records must be open to inspection of the proper authorities, and there must be full publicity."

Practice—"Yes, that is all a part of modern public utility regulation."

It will be noted that "Practice" conceded, as it has done repeatedly in the past few years, every correct principle put forth by "Theory." "Practice" has some points of its own to bring up, viz.:

Practice—"You theorists seem to think that we want something for nothing; that we want lands and rights without charge, and, when they are taken over by the Government, that we want to be paid millions of dollars for them. Do you think that, in view of our previous an-

swers to your questions, you are justified in your public charges that we are robbers and oppressors of the public?"

Theory—"It is quite apparent that if you will make good on all you have said, the charges made against you are undeserved."

Practice—"You folks think we ought to make a little money on our investments?"

Theory—"Oh, yes; liberal earnings—as much as 12 per cent in some cases to compensate for your great risks."

Practice—"You think that legislation should be so framed that we can safely provide money at low rates of interest; that we should have an assured title in the property, irrevocable except for breach of contract; that we should, so long as we serve the public faithfully and well, be free from harassment and needless abuse, and all attendant dangers and menaces to our securities—in short, that we should be able to live normally on a stable basis, and have our securities accepted as standard investments?"

Theory—"Yes, you should have the benefit of all of those things."

Practice—"Now, do you think we can have and hold all those comforting assurances if you pass a law under which the rules of the game may be changed after we have put our money on the table? Do you think we can secure money cheaply or sustain the value of our securities if the law that you pass leaves the safety of our property without even the right of appeal, subject to the varying views of successive Federal officers, or hides the future from us, or makes us guess as to what will be the order of the day or the rules of the game 20, 30, or 40 years hence? Do you

think that uncertainty and financial stability can dwell in accord?"

Theory—"No; judging from the principles of old-fashioned business under which one honest man always has and always must deal with another man, it appears only logical and reasonable that your water power law must be uniform in its application, definite and sure in its terms and give you a clear look through to the end."

Thus, theory and practice are entirely in accord, as is always the case when practice is honest and theory is correct.

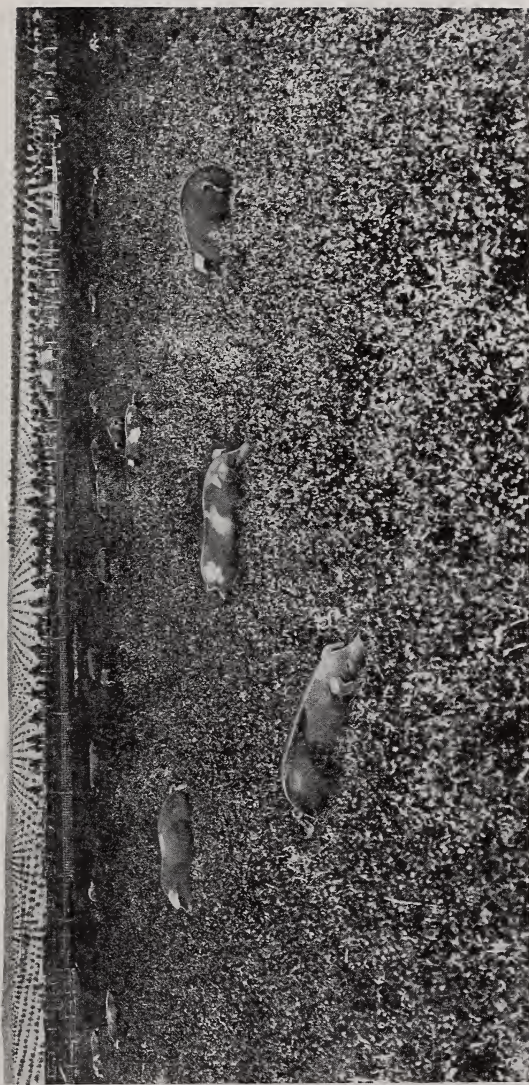


PLATE VII. WATER POWER AND LIVE STOCK.

This alfalfa field and the adjoining orchard, located in the State of Washington, would still be a desert had not hydro-electric power been available to pump water for irrigation. The hogs which are being fattened in this alfalfa field could not have been raised here had it not been for this hydro-electric power. Again we see the relation between water power and the cost of living. The Federal Government has no control over the site at which this power is generated and that is the reason why food is being produced, instead of horned toads and rattlesnakes. Is the public interest better served by producing food or by conserving reptiles?

WHO PAYS FOR UNFAIR AND RESTRICTIVE LEGISLATION?

The foregoing imaginary conference covers all of the fundamental things involved in the legislative features of this water power question, and concerning them there is, and there can be, no dispute among considerate persons. When, however, we come to the drawing of a legislative measure, it seems that we are almost certain to break away from this understanding. Small details and uncertain or indefinite expressions creep in or are, in ignorance and without malicious intent, placed in to defeat the very real objects that all parties seek to attain. *Who pays? No one but the consuming public.* Well-meaning speakers and writers blessed with patriotic regard for the public welfare have thoughtlessly advocated many things the effect of which would be to impede the progress of the water power developer, restrict his operations or prevent his exercising skill, enterprise or other goodly quality in the interest of his business. It will not be practicable to enumerate and discuss all such instances here but every one familiar with this subject will recall one or more. Those who propose such things do not need to take the word of anyone; let them get right down to fundamentals, use some good old-fashioned arithmetic, and they may prove to their own satisfaction that the consuming public pays and pays right well. To illustrate this point, we may select one of several unwise provisions of the so-called "Ferris Water Power Bill" as passed by the House of Representatives in the Sixty-third Congress.

The provision here selected, which was subsequently changed in Senate Committee, occurs in Section 5 of the House bill and provides that the Government, upon taking over the property at the

expiration of any lease period, shall pay, "first, the actual costs of rights of way, water rights, lands and interests therein purchased by the lessee * * * and, second, the reasonable value of all other property taken over, including structures and fixtures acquired, erected or placed on the lands * * *." Reduced to simplest terms, these expressions mean that no lessee would be allowed to benefit from any increase in land values that might take place, or, in other words, the owners of the power plant could not partake of any of the prosperity which they, by their investment, had created or initiated. On the other hand, the power plant will be penalized under the term "reasonable value" for all obsolescence and depreciation on structures and equipment, i. e., the owners would receive, on taking over of the plant, a price considerably less than the cost of the structures and equipment. Thus, the Government says, "Heads, I win; tails, you lose." It was argued by the well-meaning gentlemen who were responsible for this clause, that the people would thereby be saved large sums of money. A little arithmetic will demonstrate that it would have quite the opposite effect.

Assume a water power site of 10,000 horsepower capacity, which occupies land valued, for power purposes, at \$100,000. One-half of this land, owned by the United States, is acquired under lease, as proposed by the "Ferris Bill;" the other half is owned in fee by private parties and is purchased by the lessee for the sum of \$50,000. Under the above plan, the land, when taken over, would cost the public only \$50,000. Let us go beyond the point at which the advocates of this measure stopped. The power plant, with all its appurtenances, including transmission and distribution systems, would normally be worth, say \$3,000,000. How much is it actually worth as an investment risk under the abnormal condition created by the proposed law, in which it cannot partake of the normal prosperity of the region as reflected by land values?

Obviously, the plant starts out with a handicap. It cannot stand in competition with other investment risks in the region. Lands in the vicinity, occupied by dwellings, stores, industrial plants, railroads, etc., can all appreciate in value along with the country's prosperity. Not so with the power plant. It is doomed at the outset to curtailment. The penalties of depreciation are certain while the usual rewards of appreciation are denied. Of course, the plant can never be worth all it costs to build and maintain it. What is the result?

No one is going to be foolish enough to buy the bonds of that power plant at as large a price as could be demanded if the plant were not tied up with an anti-appreciation stipulation. Moreover, more interest will surely be demanded on a bond covering a plant of this kind than in the case of a security underlying any other proposition that could hold up its head in a competitive bond market. Remember that all of these industries compete with one another for money, and the one that shows the weakest case is the one which pays most for its money, unless, indeed, it is so weak that it can't get money at any price. The bonds of a non-appreciating and surely depreciating plant on Government land would be discounted in excess of 5 per cent more than they would if on private land, and pay at least 1 per cent additional interest during their life. A \$3,000,000 plant bonded to 80 per cent of its value would issue securities aggregating \$2,400,000. Five per cent discount on that sum would amount to \$120,000. One per cent interest would be \$24,000 annually. Throughout the period of bonded indebtedness, this extra interest would be paid and the land in question, originally valued at \$50,000, would eventually cost at least \$1,000,000. Who would pay for this? No one but the consuming public. All of these extra costs are the just and legal obligations forced upon the power plant. The power plant, on the other hand, derives its en-

tire income from the public and in fixing a just consumers' rate, a public service commission would have to allow for all of these extra costs due to increased risks. The public would find it all in their monthly bills. So it is that the great and beneficent purpose of saving the public the cost of appreciation on land worth \$50,000 fails when tested by the ordinary rules and laws of credit, of investment and of common sense.

The procedure and the equities in a real estate transaction are familiar. Suppose, for example, that a man buys a lot of land in a new and rapidly growing town that has been located around a water power development or is created by industries that spring up within the area of power transmission as the result of a hydro-electric development. It is known that the usual and proper course of procedure is for the purchaser of that lot of land to erect a building thereon, say for mercantile purposes. He does not anticipate appreciation in value of the structure. On the contrary, he knows that the structure will depreciate and its value will become constantly less. His productive investment is in the land and there comes a time in the growth of the municipality when he can afford to disregard any value in the building because he secures a reasonable profit in the increased value of the land. Suppose, further, that with the growth of the municipality, Congress decides that it has become advisable to erect a Postoffice building and selects this property as the best and most advantageous. No question would ever arise concerning the propriety of paying to the owner of the property a price that would represent the original cash price he paid for the land, plus the appreciated value. Such a proceeding would be equitable and the owner would be awarded that reasonable appreciation under condemnation proceedings. Now, during all the time in which that property was in private ownership, the owner thereof would be serving his own interest exclusively. There

would be no regulation of the amount of rental that he could charge tenants for the use of that property and he could discriminate and extort to his heart's content so long as he found a willing subject. The water power developer, on the other hand, whose hydro-electric property might perhaps be located on the next block, would be always subject to sovereign control; his profits would be regulated, his accounts made public and those with whom he conducted his business would be protected from discrimination and extortion. Purely real estate transactions of the kind above described are considered thoroughly honorable and legitimate. Are honorable water power transactions less honorable than real estate transactions? The fact that the water power operator is in public service is admittedly a justification for the sovereign control of his business in the public interest, while the nature of the real estate operator's business clearly exempts that business from such regulation. Nevertheless, this difference in public relation does not justify the assumption that the fundamental laws governing property values are changed in any way or that justice and equity should not be applied uniformly. That which the real estate operator would lose on his building would be compensated by the appreciation on his land, and unless this principle be applied to all real estate transactions, there can be no stability of investment in real estate. If the Government must, in equity and justice, pay the appreciated value for the Postoffice site, it follows that that same equity and justice would demand that the Government pay for appreciated value in the lands acquired by purchase for a water power site. This does not refer in any way to the recaptured Government land for which nothing was paid, and for which nothing is asked, but it refers only to private land purchased for cash. How much pioneering would there have been in building our Western cities if it had been provided by law that someone could come in and

take over our homes, stores, or office buildings, at their depreciated values, and yet allow nothing to the pioneer for appreciation of the land on which the structures are built? Again, let us consider the property as a whole. There can be no possible enhancement in the elements of value common to a private enterprise because every possibility of obtaining more than a reasonable return upon the actual investment devoted to a public use is barred through regulation. The water power owner can claim nothing for the loss of anticipated profits from pending contracts, good will and many other items of speculative value which are and must be considered when the Government is taking over the business and property of a private owner.

The case above discussed is similar to many others which could be picked out of the original Ferris Water Power Bill. We may be certain that whenever a patriotic gentleman arises, in the public interest, to place burdens on a water power development, he is actually not placing the burden on the development company but upon the people in whose interest he is supposed to act.

In private homes, the master furnishes the money to maintain the household, and anything that makes it more expensive or more dangerous for a servant to perform his duties is first of all a tax on the master. In the public service power business, the people are the sovereign and master, and the public service company is the servant. The capital of investors is here being hired to serve the sovereign people. The people must pay the bill and be fair, else the servant will be unable to obtain the money upon reasonable terms, necessary for the service of the master. What master of the house can expect efficient and faithful service, or any service at all, if he starves or maltreats his servants? Does not the same rule apply to the hiring of money and practical men of experience in the public service power business?



PLATE VIII. HYDRO-ELECTRIC POWER IN THE PORTLAND CEMENT INDUSTRY.

Power taken from the wires of a public service corporation. This cement is largely used for irrigation ditch linings, farm structures, fence posts, culverts and other things which promote the "main purpose of irrigation," namely, agriculture.

THE WATER POWER BUSINESS AND ITS RISKS

One should remember the peculiarities and risks of the water power business in this country, in the making of laws relating thereto. A law that might well serve the needs of mercantile or manufacturing business would utterly fail if applied to the water power business. Why?

No business requires so much capital investment per dollar of gross annual receipts as the water power business. The prosperous merchant will, in a year's operations, take in four, five and sometimes six times as much money as is represented by his capital investment, or, in other words, the merchant's capital investment is only 25 per cent, 20 per cent or 16 per cent of his annual gross receipts. In the case of manufactures, the Thirteenth Census Report shows that on a total investment in the United States of \$18,490,749,000, the value of manufactured products in 1909 was \$20,767,546,000. Therefore, the manufacturers of the country "turned their capital over" a little more than once during that year. In the hydro-electric business, however, it requires on an average of from six to seven years' gross earnings to equal capital investment. All of this means that in order to earn a dollar gross, the water power investor must tie up from 24 to 36 times as much capital as the merchant, and six times as much as the manufacturer. Therefore, the greatest items to be considered are (1) the cost of the large amount of money required and (2) the fact that under the best and most liberal of conditions, the water power investment risk must be large. A bad title or a burdensome Governmental restriction might be a fairly safe financial risk in a

mercantile business and at the same time be quite fatal in the water power business.

We always seek to place an office building, mill or factory in a safe locality. A water power plant must, on the contrary, always be located in a hazardous place. If it were not so put, it could not be a water power plant. One of the first requisites of a high-power transmission line is that it shall stand out free and aloof from every other thing—in other words, that it shall be exposed to all severe storm conditions. When the war broke out in Europe, Congress very properly hastened to provide for "War Risk Insurance." A power plant and its transmission lines are perpetually at war, with persistent and relentless forces of nature. Shall the water power investor be denied war risk insurance? Let him have it in the shape of reasonable dividends, good title and a contract from Government, which as to business equity, mutuality and certainty will conform to straightforward, honest business precepts.

Stores and factories can be started on a modest scale and increased according to the growth of business. This is not so with a water power plant. About 90 per cent of the ultimate expenditure must usually be made at the outset and the "dead capital" must be carried through long years of lean business. The first customers cannot pay rates for power that will reimburse the owners for their whole investment. Their rates must be the same as though the power plant were disposing of its maximum output. So, the above mentioned items representing war risk insurance must here be included under "lean year insurance."

Water power is useless without market and market is full of whims. Mills, factories and mines close down or reduce output in times of poor business, and this results in reduced power consumption; railroads operated by hydro-electric power carry lighter loads. The householder, in times of business depression, uses fewer lights, and is more careful about turning them out

when they are not actually required. Even the heavens sometimes intervene; the hydro-electric systems of the West which operate pumps for irrigation duty find their revenues enormously reduced if the fields are blessed with a season of abundant rains. In such cases the farmers do not need power for irrigation purposes—an advantage to the farmer, but none the less disturbing in the difficult financial operation of a power system. There are whims without number and each and all demonstrate the need for “market insurance.”

Thus the power business requires generous consideration at the hands of Government. It should not be inferred from this statement that the author advocates license of corporate abuse or relaxation in any degree of public control. Neither does he seek to condone any unlawful or unrighteous practice. The point is that as all these risks are natural and inevitable, and as the water power business must always be beset with more financial hazards than any other conservative business, the Government must, if it would encourage investment therein, extend to capital a definite and plain contract or franchise, leaving no loophole through which the public interest may be abused and relaxing in no respect the sovereign power of the people, but at the same time putting no burdens on the development on public lands or on navigable streams that are not also borne by developments that are not subject to Federal jurisdiction. The investment banker who disposes of securities to his clients is and must be as mindful of those clients' interests as are physicians or lawyers with respect to the interests of their clients. The investment banker's reputation is as dear to him as is the reputation of any other practitioner to himself. He must look beyond the face of a paper offered as security for a loan. He must be satisfied that the maker of that security is able to sustain the obligations entered upon. He notes the water power hazards above discussed and he rightfully de-

mands that if his clients must sustain those hazards they must, on the other hand, have a good title, a fair chance for an assured return of principal and reasonable interest and that the terms and conditions written into the franchise shall be definite and without unnecessary financial peril—that the occupation of the land is a matter of right and not of grace.



PLATE IX. HYDRO-ELECTRIC POWER IN IRRIGATION.

An orange grove in Southern California irrigated with water pumped by hydro-electric power taken from the wires of a public service corporation. Why not encourage more of this by enacting fair water power laws?

WATER POWER OWNERSHIP AND CONTROL

The author has in years past been interested by the startling statements made in the press, from the platform, and in legislative halls, concerning a "country-wide water power monopoly." During the past two years he has diligently sought for such a monopoly and has found that such a condition can not occur in the "country wide" hydro-electric field. In the first place it is absurd to think of competition or restraint of trade between a hydro-electric field in New York and another in Montana. There can be no commodity control as between the two places because the use of the power or service generated in one field is relatively local in that field. In the second place, the public controls in all cases, either by direct supervision through Public Service Commissions or through the terms of public charter which can always be revoked on violation.

Considering now the local field of distribution alone, the water power business is a natural monopoly and can, in the public interest, be nothing else. In this respect, water power is in no wise different from our Post Office Department, our city water supplies or sewerage systems. Can one imagine two competing sewerage systems in a community? The absurdity is no greater than competing water power systems. On this point one can do no better than to quote from authorities.

From the report of the National Waterways Commission (S. Doc. No. 469, 62d Cong., 2d Sess.) :

"The important fact to be gathered from the entire discussion of this phase of the subject would seem to be not so much that financiers and promoters might find it to their advantage to promote a monopoly

as that the economical considerations and the natural character of the business make monopoly almost inevitable, and perhaps desirable, when subject to strict public regulation."

From the testimony of Hon. Walter L. Fisher, then Secretary of the Interior, before the National Waterways Commission, November 23, 1911:

"I think hydro-electric development is essentially monopolistic and should be essentially monopolistic in its character. That is why I think it should be effectively regulated. I think they should have the advantage of the control of the market and the freedom from harassing and vexatious competition if we are going to put them under the disadvantages of effective public regulation."

From the testimony of Mr. Gifford Pinchot, before the National Waterways Commission, November 23, 1911:

"I am very strongly in favor of the consolidation of water power plants, coupling them up over large areas * * *. Better service to the community would be forthcoming if water power companies operated over large areas. But there must be public control of their operations to prevent the benefits which would come by reason of such consolidation from being translated into a general overcharge to the consumer."

By Hon. B. H. Meyer, member of the Interstate Commerce Commission (the American Political Science Review for August, 1911, p. 374):

"There are few things which the industrial history of advanced nations proves more conclusively than that competition in the field of public utilities has failed to insure reasonably adequate service at reasonable rates. The public has had occasion to learn this lesson many times on a large scale * * *. Certainly we have had enough repetition of disasters to the public as well as to investors to lift this subject out of the field of controversy; but somehow these lessons have not been on a sufficiently large and overwhelming scale, for the fetish of competition is still being worshipped, and the cry of competition is still raised by many as the touchstone capable of dissolving every obscure entanglement which the strained relations between the utilities and the public sometimes create.

"The Wisconsin public utilities law is a repudiation of the fallacy of competition as a guarantor of good service at reasonable rates and is planted squarely upon the ideas of monopoly in the utility business except in the case of telephones. Give a utility plant a definite field and compel it to do its proper work reasonably well within that field; this is one of the basal ideas in the law."

And finally, President Wilson in an address before the students of the University of California in 1911, said :

"Public service corporations are, in a very interesting sense, natural monopolies * * *. It is perfectly obvious that if other companies are allowed to compete with them there is a wasteful duplication in outlay and equipment, so that competition generally results in the eventual combination of the competing companies and the necessity to charge a price on what they supply that will pay the interest on twice as great an investment as was really necessary for the service."

WATER POWER LEGISLATION

The Sixty-third Congress gave much consideration to water power, yet, because of divers conditions and complications, failed to enact any law. Two bills had passed the House and were on the Senate Calendar when the Congress closed. H. R. 16053, known as the "Adamson-Shields Bill," covered water power development on the navigable rivers. H. R. 16673, known as the "Ferris Bill," related to power sites on the Public Lands. These bills differed materially because they related to entirely different situations. It will not be practicable to discuss these bills in detail nor to set forth all their merits and demerits. It will, however, be helpful to review certain parts of them because they will illustrate most concisely the important features of the discussion. For convenience, copies of these two bills are placed in the Appendix.

Navigable Stream Legislation.—As amended and passed by the House of Representatives, the Adamson Bill was a mere waste of time and paper. In many respects it promised to the investor far less security and much more burdensome restrictions than the present General Dam Act of 1910, under which water power development has become practically stagnant. For an extended discussion of the defects of the Bill the reader is referred to Senate Document No. 570, Sixty-third Congress, Second Session, entitled "Development of Water Power; Comments Relative to H. R. 16053." The Commerce Committee of the Senate, to whom the House Bill was referred, made material changes and, while retaining many of the fundamental principles upon which the Adamson Bill was based, partially eliminated the unworkable portions and added many new beneficial features. The "Adamson-Shields Bill," as finally reported, had the unanimous approval of the Committee.



PLATE X. BLEWETT'S FALLS DAM, YADKIN RIVER, N. C.

This dam, 1,469 feet long and 50 feet high, is used to generate water power in the public service, under public regulation. Had the site been located farther down in the navigable portion of the river, it could not have been developed. Why? It could not have been financed under present Federal laws governing navigable stream power developments. What does the public gain from such laws?

The "Adamson-Shields Bill" gives the Secretary of War authority to approve the construction of dams and water power plants in the navigable streams, upon the grantee's compliance with the terms of the Act and the Departmental rules and regulations thereunder. The specific terms may briefly be recited as follows:

1. The grantee must possess suitable qualifications under laws of the State in which the structure is to be erected, must promptly start and diligently perform the work within specified periods.

2. The grantee's right to occupy the site extends for 50 years, and until the United States takes over the property upon payment of the fair value thereof, which fair value shall not include any value of the right or franchise granted by the Government. Thus the Government has the option at the end of the 50-year period to (a) operate the property, (b) renew the grant to the original grantee on mutually satisfactory terms, or (c) convey the property to a new grantee.

3. The grantee is required to pay the United States: (a) for the cost of investigation and supervision of construction by the Department; (b) for benefits derived from headwater improvements of every kind made at Government expense; (c) for all lands of the United States occupied by the grantee, the charge to be in the form of annual tax or rental determined by the Secretary. All other taxes are left to the States and municipalities involved.

4. All plans must receive the approval of the Secretary of War, and he is directed to approve only those which are best adapted to expedite and utilize the water resources of the region in the most useful way. The plant must be operated under the direction and control of the Secretary of War, with due regard for the interests of navigation. As a condition of approval, the Secretary may, at the time of approval, require the grantee to construct locks and other navigation facilities, all of which become a part of compensation to Government for the rights enjoyed.

5. In case of dams built by the Government, the Secretary of War is given authority to lease the surplus power on such terms as may be for the best interests of the United States.

6. The bill provides for reserving the right to regulate rates and service in the case of interstate business; for reasonable rates and efficient service under all conditions; for full regulation by Secretary of War within States which have provided no regulatory functions.

7. Complete penal section is provided under which every necessary executive and judicial act may be taken to secure full and complete compliance with all laws and regulations.

Power developments on navigable streams by private capital would improve navigation and render the streams navigable for further distances into the interior of the country. This would not only benefit the whole public through increased transportation facilities, but would relieve the Government of the cost of making navigation improvements at the expense of the Treasury.

Public Lands Water Power Legislation.—The water powers of the public lands of the West were much debated during the Sixty-third Congress. In May and in December, 1914, hearings on the so-called "Ferris Bill," H. R. 16673, were held by the Public Lands Committees of the House of Representatives and the Senate, respectively. There appeared at the time to be much diversity of opinion, though close analysis shows that all were contending for the same fundamental things. One side comprised those who, as public-spirited citizens, had studied the question in an academic way and desired legislation that would protect the public interest. They frankly confessed that they had no practical experience in the water power business either from the investment, the operative or the construction standpoints. The other side was represented by practical water power men who had given long years to the construction and operation of hydro-electric systems; also by

financiers, bankers and investors who were well informed from practical experience on that phase of the water power question. Thus there were the doctrinaires on the one side and the practitioners on the other. What was the trend of their testimony?

The practitioners were in thorough agreement with the doctrinaires as to the regulation of water power practices and the protection of the public interest. They disagreed only upon one general point, viz.: the practitioners insisted that the public interest could be protected without making water power investment impossible or a speculative thing at best; that the legislation upon which the doctrinaires insisted would result in the immediate depreciation of every dollar expended in water power development. So far as the author is able to learn, not a single engineer of practical experience, nor an operator, nor a financier appeared in favor of the so-called Ferris Bill as it was introduced into the House of Representatives, favorably reported by House Committee and passed. Can it be possible that all of those experienced men were mistaken, or can it be believed that they all deliberately falsified? The author thinks not. In every walk of life we are guided by the weight of experience. Can there be any doubt that the practical men who testified concerning practical things were better qualified for such testimony than were the doctrinaires? One who sits in impartial judgment and who duly regards the weight of evidence in this matter is bound to arrive at one of two conclusions; either the practical men were right, or the practical men deliberately attempted to deceive Congress. Does anyone seriously believe in the second conclusion? Please remember in answering this question that the points at issue were not those of mere policy, nor did they involve any theorizing on prospective events. All were in agreement as to the results to be accomplished in the public interest. In all the public testimony and expressions of opinion that I have seen, the doctrinaires have, without exception, been

liberal in their views as to the return which they believed the water power investor justly entitled to receive. There were no differences whatever as to what the final result ought to be with respect to all parties concerned. The only differences were as to the language in the bill necessary to accomplish the purpose upon which all were in agreement. These differences involved plain matters of business security, the principles underlying which were settled centuries ago. All will admit that the doctrinaires were sincere and their motives patriotic, but when we come to a choice between experience and inexperience it seems certain that the world will finally be governed by the findings of experience.

The "Ferris Bill" as passed by the House of Representatives, was built up on the assumption that Federal ownership of land, necessary to water power development, carries with it the ownership or at least the right to control the use of the water and the right to impose a Federal tax and any other conditions, without limit, on the power developed by the water. The ownership and regulation of water in the West has, by State constitution, State statute and common consent, for many years been regarded as vested in the several States. In the Western States the doctrine of the appropriation of water for actual beneficial use prevails, as against the Eastern riparian doctrine that the abutting property owner can require the water to flow—and waste—as it is wont to flow, as against the claim of someone who desires to put the water to beneficial use. The appropriation doctrine of the arid States is the child of necessity, where water is as precious as the air and where practically every use of water is both a public and beneficial use. Under the "Ferris Bill," Federal ownership of even a minute portion of the land necessary for power development would mean Federal control which would cover or markedly influence the taxation of all of the remainder of the property used in the power site, whether its ownership be State or



PLATE XI. ALL FARMERS ARE NOT EQUAL BEFORE THE LAW.

The Roosevelt Dam on the Salt River Irrigation Project, Arizona, was built by the Government and the farmers pay actual cost. It develops 8,640 horsepower, from which the farmers will receive perpetual benefits. Good! Farmers who occupy "Carey Act" or State projects or who develop with private capital can not secure the benefits of public land water power sites because the Federal Laws won't permit financing of such developments, and even if proposed new laws were enacted, their rights would run only fifty years. In law this is called "discrimination."

private. Almost every feature controlling the integrity of the investment and the stability of public service, including the raising of Federal revenue, was, according to this bill, to be fixed by the discretion of an appointive official—the Secretary of the Interior—who has no sovereign powers, whose opinions do not commit the Government, nor does the opinion of any particular occupant of that office commit his successors therein. One of the confessed objects of the bill was to make it possible for the Secretary of the Interior to impose discriminatory rentals or taxes in accordance with his judgment, or his preferences in any particular case, all of which is diametrically opposed to the fundamental American doctrine of equality before the law. Because of the financial uncertainties imposed, every investment made under the House bill would be highly speculative and no water powers could be developed except at great risk and under conditions which will permanently put great and wholly unnecessary burdens upon the people and throttle the growth of the Western States.

As the bill was reported out of Committee in the Senate, it retained, though to a modified extent, the fundamental assumption in the House bill that Federal ownership of land may properly become a pretext for the control of the use of water owned by the State. Much of the absolute discretionary power conferred upon the Secretary of the Interior by the House bill was removed by the Senate Committee and the equivalent stipulations were either fixed in the bill or left to the sovereign discretion of the States. As a whole, the Senate bill is remarkably improved—so much improved, in fact, that its few fatal defects seem all the more regrettable. Among them are the following:

1. The last proviso of Section 1 requires that no lease shall be granted until the applicant has secured the water right from the State wherein the project is to be located. In many, if not all of the States of the West, water rights cannot be perfected until bene-

ficial use has been made of the water. Therefore, the power developer would be in the peculiar position of being unable to secure a Federal lease until he had procured a State water right, and, on the other hand, of being unable to secure the State water right until he had acquired and developed under the Federal lease. This difficulty would be well met by providing that the applicant must, previous to securing the Federal lease, have initiated water rights under the laws of the State.

2. Section 3 provides that authority for the regulation of rates and service and the supervision of the issuance of stock and bonds shall, in interstate cases, be vested in the Interstate Commerce Commission. Some legal objections have been made to this, the soundness of which the author is not qualified to discuss. The practical objection is that interstate regulation of electric service and the financing should not be confined merely to those water power plants which occupy public domain in whole or in part. If the time has come for the Federal Government to regulate this industry, then it is obvious that such regulation should be applied upon identical terms to all interstate service, whether the plants occupy public or private lands, or whether the electric power be generated by water, by steam, by gas or in any other manner. Any other procedure unjustly discriminates against and renders vastly more difficult the development of water powers on Government lands as compared with those on private lands. Why should the occupant of a right of way over Federal land be subjected to class legislation? Why should the amenability of a power developer to the law, and the consequent jurisdiction of the Courts over his business, depend upon whether his pipe line goes over or around a few feet of Government land? Is it better for Congress to settle all these matters by general laws, or that every individual shall be left free in this bill to vary his pipe location and thus settle these questions as he may elect?

3. Section 6 contains a provision the real purport of which was probably not intended by the reporting committee. In any event, the provision directly violates the standards which the committee has established in other parts of the bill, viz.; that the investor shall have definite and well-defined security. The section provides that if at the end of the 50-year lease period, the United States does not exercise its right to take over the properties, and does not renew the lease to the original lessee, nor issue a lease to a new party, who, on receipt thereof shall reimburse the original lessee for the fair value of his property, the said original lessee may, "at his option," retain the lease on such terms and conditions as may be in force at the time of lease expiration. What is this option? It is (a) to accept the lease on such new terms as may then be in force or (b) abandon the property. This is precisely equivalent to saying to a drowning man "sink or swim." Remember that in the premises set forth, the United States fails or refuses to take over the property, fails or refuses to renew the lease to the original lessee and fails or refuses to lease to a third party who will pay for the property. Then comes the option, "sink or swim," or, in other words, "take what I give you or abandon your property." Please apply this principle to a lease of ground for the erection of a twenty-story building, in which lease it is stipulated that the lessee shall spend \$1,000,000 for the building, and at the expiration of the lease will (a) be reimbursed for the then fair value of such improvements, or (b) receive a renewal of the lease, or (c)—here comes the "sink or swim" provision—will be given a new lease upon such terms as the lessor may at that time be granting generally to other lessees. Evidently, such a lease would give no security to large invested capital. This should be remedied by providing that if the Government does not exercise its right to take over or to renew the lease at the end of the lease period, the orig-

inal lease shall continue until the Government does exercise this right.

4. The proviso in Section 7 excludes "going concern" as one of the elements of value which cannot be taken into consideration when the property is taken over by the Government. Justice of such an exclusion all depends on the framers' meaning of the term "going concern." The Supreme Court decided in the Omaha case (218 U. S., 180) that, properly interpreted, the term is applied to the product of legitimate cash expenditure. Therefore, the exclusion of "going concern" means confiscation of a portion of the property and under such conditions no prudent investor will buy the securities. Whatever may be the principal significance of this or any other term, it is manifest that the Courts have uniformly excluded claims for values not actually represented in the property taken over. Therefore, it is both needless and dangerous to exclude off-hand a set of values which are likely to be thoroughly legitimate.

5. Section 7 of the bill provides that no lessee may execute contracts for the sale and delivery of electrical energy for periods extending in excess of twenty-five years beyond the 50-year period of the lease. This gives a margin of 75 years for a contract if the same is made at the beginning of the lease term, which would probably be sufficient except for very large and expensive industrial works, such as electro-chemical and electro-metallurgical plants; also for railroad electrification and large irrigation systems, both of which must have power for all time. All of these would be practically excluded, or at any rate greatly deterred by the provision here discussed. Another serious consideration lies in the fact that at the end of, say, 40 years of the lease period, the lessee would, under no circumstances, be able to enter into contract with a consumer for a period longer than thirty-five years. This is a very heavy burden which cannot be borne by the hydro-electric indus-

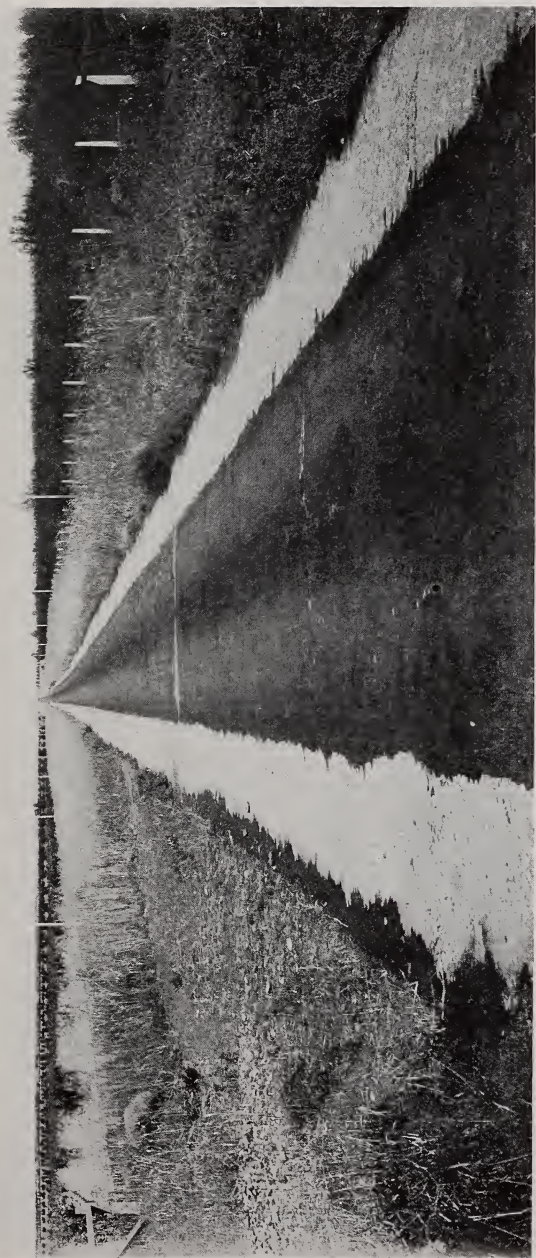


PLATE XII. WATER POWER AND HIGHWAYS.

This macadamized road followed the reclamation of the desert near Pasco, Washington. The water is pumped to the land by public service hydro-electric power. Fortunately the power site is not controlled by the Federal Government. Had it been so controlled, it could not, under present Federal Laws, have been developed and this public highway would not have been constructed. Does the country gain or lose by the present Federal policy?

try without serious detriment. It is, so to speak, a placing of shackles upon legitimate and praiseworthy industrial development; it greatly injures both the power investor and the consumers of the power. Whom does it benefit? The duration and the terms of contracts extending beyond the lease period should be approved in all cases by the duly constituted State authorities.

6. Section 8 provides that the rentals for Government lands may, in the discretion of the Secretary of the Interior, be based on the power developed at any site involving Government lands. This is a direct Federal tax on power production—a tax on Western development. It is wrong in principle. The Government holds its land as proprietor and the rentals for that land should be on the basis of the value of the land. In other words, the Government should receive fair remuneration for the use of its land, but the Government cannot, in fairness, use the power of might to extort from the Western communities a higher rental than would be allowed for the same land were it privately owned.

There can be no essential difference in equity between the basis of compensation to be paid to the Government for the use of its lands and that underlying the compensation paid to Farmer Jones. If the land occupied by a water power development is owned in part by the Government and in part by Farmer Jones, the land as a whole has a well-defined value for power purposes. Farmer Jones should receive as much, and no more per unit of actual value contributed for his land than the Government receives, and conversely the Government is entitled to compensation on exactly the same basis as that given to Farmer Jones. If, however, the Government is compensated on the basis of power delivered at a rate to be determined in the case of each lease by an administrative officer, it will certainly occur that in many cases the lessee will be paying the Government a price which, if extended to cover all the land involved in the site, would render the power project a financial

impossibility. In such event, Farmer Jones and his neighbors—who may, perhaps, own, say, 94 per cent of the land necessary for the complete power development—will be unable to sell or use their water power lands. Clearly, this is in effect equivalent to the confiscation of the water power lands of Farmer Jones and his neighbors through the exercise of the arbitrary right of might by the Federal Government, owning in this case only 6 per cent of the power site lands.

7. Section 17 provides that in cases where a lessee proposes to occupy a power site containing 5 per cent or less of Government land, the Secretary of the Interior may, in his discretion, waive such terms of the Act as he may think best and impose such new terms and rentals as he may deem just. Why 5 per cent? Upon what principle is 5 per cent exempted rather than 6 per cent, 7 per cent or some other ratio? Or was this figure selected upon any principle? The fundamental defect in the "Ferris Bill" as passed by the House was its indefiniteness from the investment standpoint. It left to the discretion of an administrative officer the determination of many points vital to the integrity of the water power investment. This section establishes in a most extreme form, this unbridled discretionary power which the committee largely eliminated from the preceding sections of the bill. Irrespective of the proportion of Government land occupied, whether it be five per centum or more, the Government should be paid a fair rental for said land based on its value for all purposes. Upon what principle of equity should industry, and particularly the struggling agricultural communities of the arid West, be forced to pay more?

8. Section 20 provides that the lands leased and the works created thereon may be used or enlarged by another person than the lessee for the purpose of "impounding water for irrigation, mining, municipal, domestic and other beneficial purposes." In

other words, the original lessee who erects a dam and thereby creates a fall for water power must, in case he can not use all the water while he is building up his business, donate the benefit of that improvement to one who may, without expenditure for a dam, enter into destructive competition, possibly for purposes of mere blackmail. It is only fair that any subsequent developer who makes use of a lessee's structure should be made to pay the reasonable proportionate cost of the benefits which he acquires from the original lessee's structures.

Three other water power bills concerning public land sites were introduced into the Sixty-third Congress, viz. : S. 6712, by Senator Jones of Washington; S. 7071, by Senator Works of California, and S. 7101, by Senator Smoot of Utah. It will be instructive to refer briefly to these bills in order to illustrate the points of view of the authors and to compare them with the underlying theory of the "Ferris Bill."

The "Jones Bill," S. 6712, provides for a grant of lands for a definite period under stipulations designed to protect the public interest, said grants available to all alike who comply with the law as enacted by Congress. With respect to the moot question of Federal vs. State sovereignty, the bill avoids extremes in either direction. It leaves to the United States the present and future control and disposition of the public lands, retaining the title therein to the Nation and imposing rentals or taxes *on the value of the land*. It accords to the States the exercise of their own sovereignty over waters and the operation of the water power plants, except in so far as the same may interfere with navigation. The bill is entirely practicable from the investment standpoint and its passage would, without doubt, be rapidly followed by great power developments.

The "Works Bill," S. 7071, was drafted on the conception that the ownership and control of water by the State is the main inci-

dent in the granting of a water power concession or franchise, and that the land owned by the United States is a somewhat subordinate feature, the ownership of which confers on the Federal Government no more sovereignty than would the land of a private citizen confer sovereignty on him; that the United States cannot, by mere stipulation with a willing grantee, deprive a State of complete sovereignty over the use of its water or over its purely intrastate developments. Accordingly, the Works Bill provides that the United States shall grant the use of its land, without parting with the title thereto, said grant to be co-terminous with the grantee's right to the use of water. The rental for such land is based on the value of the land and whenever it is no longer needed in the beneficial use of the water under the State's authority, the land reverts to the Government. The bill is financially sound and investments would readily be made thereunder.

The "Smoot Bill," S. 7101, provides for the acquisition by the State, under certain conditions, of any public lands chiefly valuable for water power development. Any State possessing a public service commission or its equivalent, could, through said commission, file application for such lands and receive patent thereon. Thereafter the State could not, under penalty of forfeiture of said lands, alienate the fee simple title or utilize the lands for any other purpose than that of power development and operation. The State, or those authorized under its laws, must develop the power and place the water to beneficial use and all power sold or delivered therefrom must be under State authority as to rates and services. Thus the Smoot Bill is based in part on the same premises as have been described for the Works Bill—that the beneficial use of the State's water is the controlling factor and that mere ownership of land is a mere incident; that inasmuch as sovereignty over the water is vested in the State, said State and its



PLATE XIII. SPRING SCENE ON A DESERT RECLAIMED WITH WATER PUMPED BY HYDRO-ELECTRIC POWER.

Part of the intensive development of arid land by the Pasco Reclamation Company near Pasco, Washington. Water for irrigation pumped from Snake River by hydro-electric power taken from the wires of a public service corporation. Is this not the best possible way to reduce the cost of living? The United States has spent over \$80,000,000 of the people's money for reclaiming arid lands of the West. Private capital will spend ten times as much for the same purpose if only the unreasonable restrictions against water power development are removed. Would not such removal be for the public good?

citizens cannot lawfully be deprived of the incidents necessary to the exercise of that sovereignty, nor of the benefits to be derived therefrom. The bill is the antithesis of the Federal idea set up in the original "Ferris Bill," and if passed will effectively stimulate power development. It is a simple and effective measure which consistently sustains the long-established American theory and constitutional guarantee, that the sovereign States shall be on a par as to conduct and regulation of their internal affairs.

For the benefit of those who wish to make critical analyses of the several bills discussed in preceding pages there is inserted in the appendix, first, a concise comparative parallel-column statement of the provisions of the "Adamson Bill" as passed by the House of Representatives, and the "Adamson-Shields Bill" as reported to the Senate; second, similar parallel-column comparisons of (a) the "Ferris Bill" as passed by the House of Representatives; (b) as reported to the Senate; (c) the "Jones Bill" and (d) the "Works Bill." Copies of the Jones, the Works and the Smoot Bills will also be found in the appendix along with the Adamson-Shields and the Ferris Bills.

CONCLUSION

If the author has been successful in expressing his beliefs, it must be apparent that he has not been contending for a water power law that deprives the people of any sovereignty, nor of any property rights that the people now, or in the future, may possess. Neither does the author desire that any water power grantee or lessee should even for a moment be exempt from sovereign control nor from complete regulation in the public interest. His contention is that the Government may preserve all these rights and powers and still do business on an honorable and constructive basis with the investor and guarantee to him a mutual contract that will not deprive him of the security of his investment.

There have been some who, in reply to the arguments set forth in the foregoing pages concerning investment security, have asked, "Why cannot the investor trust the Government to do the right thing when the time comes?" There are two answers to this, viz.:

1. The investor has learned that, in dealing with Government, with its changing administrations and shifting policies, he must have his contracts and other legal instruments as airtight as though he were dealing with a private party. There are many cases which could be cited in support of this contention but the ones which bear more directly upon the subject here discussed consist of the revocation of twenty-five water power permits by a Secretary of the Interior just before he went out of office in March, 1909. Under some of the permits so revoked millions had been spent and the plants had been constructed and were in operation. There was no allegation in any of these cases that the permittees had violated law or regulation or had in any way failed in their obligations assumed under

the terms of the permits; nor had the public complained in any way that they were not being faithfully and efficiently served. The plainly stated pretext was that the Department had made new regulations and desired to bring all previous permittees under them. Up to the time these revocations were made, investors had not been suspicious of the Act of 1901, notwithstanding the fact that by the terms of that Act, permits secured thereunder were revokable at the discretion of the Secretary of the Interior. The investors had been advised by well-qualified legal authorities that construction and development gave them a vested interest—an interest which could not be revoked at the will of an administrative official. There was also a comfortable feeling that the Government might be expected to set the example in the matter of good faith and fair dealing and investors commonly believed that the Government would not, in the absence of misbehavior on the part of any permittee, revoke a permit and thereby ruin the credit standing of a water power company and subject the security holders to great and irreparable loss. Yet these unfortunate revocations did occur and numerous ejectment suits are now pending in the Federal Courts. Confidence in such permits or implied promises of Government can never be restored.

It should also be mentioned that this lack of trust by investors is intensified by the commercialized muck-raking in periodicals, newspapers and on the public platform, which has been aimed at water power men during the past few years. Muck-raking has become an avocation—a matter of bargain and sale, and abuse is applied irrespective of guilt or innocence. It is not strange that the prudent investor backs away from a water power franchise based on Government discretion or revocable promise instead of on a Government contract, when the only men whose water power efforts have borne fruit are the very ones who, irrespective of their deeds or intentions, have been lumped together and called unclean

by the muck-rakers, whose sole object is personal gain or notoriety.

2. The second answer to the foregoing question is that it is necessary that a Government grantee shall be able to rely upon a definite grant rather than upon the grace of the ever changing appointive officials. The Government would not issue a bond clouded with such uncertainty, and in like manner the Government should not even think of issuing a grant under which the grantee will have to offer an uncertain and possibly worthless bond to the public. That which the Government has found necessary to the integrity of its own securities should not be denied those who have devoted their money to a public enterprise and are working under a Government concession as honest and faithful public servants.

Confidence in water power investments cannot be restored by mud-slinging speeches and writings. We cannot hasten the day of water power development by calling each other fools or rogues, or by inciting class against class or by promoting prejudices. The man who is skillful enough to build and operate a water power and the man who is brave enough to finance it are surely deserving of reward, and they are not, by such acts, necessarily made over into thieves and oppressors as some would have us believe. On the other hand, the man who stands fast for a fair and righteous deal to the public is not a charlatan and a seeker for cheap notoriety, as others would have us believe.

As has already been remarked, all parties are very close together. Some of the remaining differences are mere matters of terminology. Instead of "bawling out" a proposal merely because it is advanced by a water power man, would it not be better to get beneath the surface and judge it upon its merits? Instead of scoffing at another proposal merely because a "conservationist," without water power experience, expresses it, let us see whether it does not have that estimable advantage of perspective. We want water power development as soon as possible, and it makes not a

shade of difference who, in the controversy of the past eight years, has been right and who has been wrong. The cause is bigger than any man or group of men. Let us forget the past and start new.

We are sure of a few things:

1st. That it is not safe nor ultimately profitable to conduct an industry in a wrongful manner; this is one of the axioms of modern business and the successful water power business rests absolutely upon it.

2d. That the water power men do not expect to get from the Government more than is fair, and they do not expect to conduct their business in a wrongful manner. If they had other expectations or intentions, Congress would see to the one and public service commissions to the other.

3d. That there will be no water power development commensurate with the resources of the country unless Congressional legislation will so safeguard development as to encourage investors to put their savings into water power enterprises and thus permit water power companies to obtain ample capital at reasonable rates.

4th. That Congress and the various State legislatures can control water power companies engaging in public service business—can control their rates and service—and it is not necessary to impose conditions hindering or restricting development and the acquisition of capital in order to insure fair treatment of the consumer.

5th. That every petty burden and every irritating limitation placed on a water power development for the purpose of “protecting the public” is and must be paid for by the public. Therefore, in setting up these things for the public good, it is always well to ascertain whether or not some of the many obstructions really are for the public good and whether in each case the good derived is commensurate with the cost. It is only when the benefits equal or exceed the cost that such things are wise.

6th. Finally and most important—water powers on the public lands and on the navigable streams will always be commercially inferior to and will lag behind those developed on non-navigable streams and on private lands unless the conditions and stipulations governing the former are at least as favorable as those governing the latter.

HENRY J. PIERCE.

Seattle, Wash., August 1, 1915.

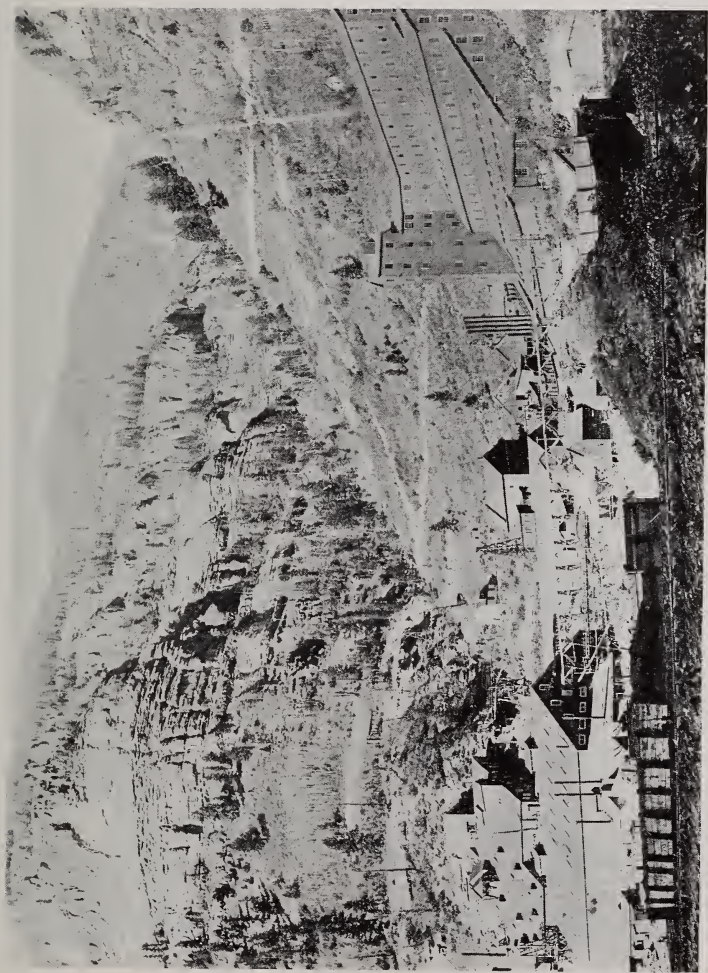


PLATE XIV. HYDRO-ELECTRIC POWER IN THE MINING INDUSTRY.

The Smuggler Union Mills, Telluride, Colo. Power taken from the wires of a public service corporation. Would it not take fair, and even liberal, treatment to induce you to become a pioneer and put your life's savings in a wild place like this?

APPENDIX A

COMPARATIVE REVIEW OF THE PROVISIONS OF THE "ADAMSON BILL" AND THE "ADAMSON-SHIELDS BILL"

ADAMSON BILL (H. R. 16053)

as passed by the House of Representatives.

AUTHORITY.—The requirement that consent to develop water power must be obtained, in each individual case, from Congress would prevent the early development of our water powers. (Sec. 1.)

CAPACITY OF GRANTEE.—Any person, corporation or association may become grantee whether or not possessing qualifications recognized by a State. (Sec. 1.)

TENURE.—One year preparatory; three years for construction; fifty years tenure. (Secs. 9, 10 and 12.)

RECAPTURE.—By giving two years' notice, the Government may purchase from the lessee at the end of fifty years "all of the property of the grantee necessary and useful for the generation, transmission or distribution of power, including all property to initial point of distribution." This would leave on the grantee's hands all distribution property dependent for its usefulness and existence on the power production property taken from it by the Government. In the interest of both seller and purchaser, both the power production and distributing property should, if purchased, all pass intact from the grantee to the Government.

ADAMSON-SHIELDS BILL (H. R. 16053)

as reported by the Senate Committee on Commerce.

AUTHORITY.—The authority given to the Secretary of War to grant permits would make possible the early development of our water powers, provided the terms of the grant were such as to enable the grantee to obtain capital for development purposes. (Sec. 1.)

CAPACITY OF GRANTEE.—A grantee for public utility uses must possess lawful qualifications under State laws. (Sec. 1.)

TENURE.—Two years preparatory; five years for construction, if actually needed under diligent procedure; fifty years tenure, and pending the decision of the Government as to which course it shall then take (see below under "Recapture"), the original grant shall continue under the same terms and conditions.

RECAPTURE.—The Government may take over at any time after fifty years "all the property of the grantee, dependent in whole or in part for its usefulness on the rights herein granted which are *necessary* and appurtenant or acquired and valuable or serviceable in the distribution of water or in the generation, transmission and distribution of power."

All of the above described property would be necessary for full operation and distribution if taken over by the Government for itself or a new grantee, and any portion of it left on the hands of the original grantee would be valueless to him except for disposition as junk.

ADAMSON BILL—Continued

The Bill provides that if the Government takes the property, it shall pay actual cost for lands, depreciated value of structures and nothing for "intangible elements."

The provision that the Government or a new grantee should assume existing contracts made in good faith is in effect the same as in the Shields Bill.

At the end of the 50-year tenure, the Government has four options:

- a. May purchase the property by authority of Congress and operate it.
- b. May renew the grant to existing grantee.
- c. Grant may be transferred to a new grantee.
- d. May do nothing and leave the original grantee at end of tenure with property on his hands and no franchise or right to operate it.

The uncertainty as to what the Government would do would prevent capital from entering the water power field. (Sec. 10.)

PAYMENTS TO GOVERNMENT.

- a. Such rental charges for privilege as Secretary of War may impose; first rental rate to operate 20 years and then a readjustment, to be followed by subsequent adjustments every ten years thereafter.
- b. For cost of investigation necessary for approval and for supervision of construction.
- c. For benefits derived from head-water improvements of every kind.
- d. For lands of United States occupied, such charges as may be fixed by Secretary of War.
- e. For cost of removing structures at any time Secretary of War shall believe navigation has been injured. (Secs. 2 and 4.)

CHARACTER OF PLANS.—The Secretary of War is *directed* to require that the plans shall be "best adapted to conserve and utilize in the interest of navigation and water power development, the water resources of the region."

ADAMSON-SHIELDS BILL—Cont'd

The bill provides that the grantee shall be paid the fair value of the property, meaning the value of the land at the time it is taken over and the depreciated value of structures, together with such other elements of value as may be fair and lawful. Contracts which have been entered into in good faith and under reasonable conditions are to be assumed by the Government, but nothing is to be paid for them. If the grantee and the Government cannot agree upon prices for the property, it shall be left to the district Federal court for decision.

By authority of Congress, the Government may take over the property at any time after fifty years, and

- a. Renew the grant to the original grantee on such terms as may be authorized by then existing law.
- b. Grant the privilege to a new grantee on such terms as it may be able to secure;
- c. Operate it itself. (Sec. 6.)

PAYMENTS TO GOVERNMENT.

- a. No rental charge for privilege.
- b. Same as (b) opposite.
- c. Same as (c) opposite.
- d. Same as (d) opposite.
- e. No provision for destroying the works of the grantee without indemnity, unless grantee commits an unlawful act.

No Federal tax upon the development of water power is imposed. The taxation, if any, is left to the States to impose.

CHARACTER OF PLANS.—The Secretary of War is "*directed*" to accept the plans of the applicant "best qualified to expedite and realize the maximum useful development of all the water resources of the region."

An additional requirement not specified in the Adamson Bill requires that the applicant must first comply with the laws of the State. (Sec. 2.)

ADAMSON BILL—Continued

LOCKS.—The bill makes it obligatory upon the grantee to provide locks for navigation facilities whenever, during the term of the grant, the Secretary shall determine that such improvements are needed for navigation purposes.

This holds over the head of the grantee an expenditure, which may be demanded at any time, equivalent in some cases to the entire cost of the power plant. A lessee is entitled to know before he invests his money and that of his backers approximately what his investment is going to be. There can be no surety under the Adamson Bill in this respect.

In case Government builds locks, grantee must convey land needed free of cost to Government, and furnish free power to construct and operate same. (Secs. 2 and 3.)

POWER AT GOVERNMENT DAMS.—The right to the use of surplus water in Government built and owned dams may be granted for 50 years, subject to payment of reasonable rentals, for an initial period of twenty years, and readjustments at the end of each 10-year period thereafter, preference being given to municipal corporations. (Sec. 14.)

PUBLIC LANDS.—The bill provides that any public lands necessary for power development in connection with improvement of navigation may be obtained only through the President withdrawing them for that purpose.

The bill gives no right to the exercise of eminent domain for securing public lands necessary for power purposes in connection with navigation improvement. (Sec. 4.)

ASSIGNMENT.—Assignment of grant can only be made with the consent of the Secretary of War. (Sec. 8.)

ADAMSON-SHIELDS BILL—Cont'd

LOCKS.—Under the Shields Bill, the Secretary of War has ample authority to secure from a grantee all navigation improvements, the only difference between this and the Adamson Bill being that the Secretary of War must specify his demands at the beginning and thereby enable the grantee to have some assured financing.

In case Government builds locks, same requirements as in Adamson Bill. (Sec. 2.)

POWER AT GOVERNMENT DAMS.—The right to develop power at Government built or owned dams may be granted by the Secretary of War under "such terms as may be deemed by the Secretary of War for the best interest of the United States and reasonable and fair to both parties," and in awarding such lease, preference shall be given to the applicant whose plans are deemed best adapted to conserve and utilize in the public interest the navigation and power resources of the region.

PUBLIC LANDS.—The bill provides that the grantee may use public lands certified by the Secretary of War as being necessary for navigation purposes upon the withdrawal of the same by the President for such purposes and by payment of such rentals as may be fixed by the Secretary of War.

The bill gives no right to the exercise of eminent domain for securing public lands necessary for power purposes in connection with navigation improvement. (Sec. 2.)

ASSIGNMENT.—No assignment of the grant except for purposes of financing can be made without the approval of the Secretary of War to "any transferee not having the qualifications here-

ADAMSON BILL—Continued

REGULATION.—Secretary of War given authority to regulate rates and service in interstate business, but whenever a State maintains regulation which shall be equitable as between States, Secretary may forego this. No authority given Secretary to regulate intrastate rates in cases where State fails to do this. Publicity of accounting provided. (Sec. 11.)

AUTHORITY OVER NAVIGATION STRUCTURES.—This bill may deprive Secretary of War of exclusive authority over navigation-power structures, because in cases where public lands are utilized and the President has not withdrawn said land from entry for the sole purpose of navigation, the Secretary of the Interior has joint jurisdiction with the Secretary of War. (Sec. 3.)

NAVIGATION INTERESTS.—Dam and accessory works operated under control of Secretary of War and navigation is paramount. (Sec. 5.)

PENAL CLAUSE.—Provides full penalties for all violations of law and lawful regulation and gives Secretary of War authority to remove or destroy the works at expense of grantee. (Sec. 7.)

REPEAL.—In reserving the right to alter, amend or repeal, the bill specifies that in such case the lessee shall receive no compensation for damage or

ADAMSON-SHIELDS BILL—Cont'd

in specified for a grantee hereunder," but "any successor or assign of the rights of any such grantee shall be subject to all the conditions of the permit to the same extent as though such successor or assign were the grantee hereunder." (Sec. 1.)

REGULATION. — Congress reserves right to regulate interstate rates and service. Secretary of War authorized to regulate intrastate rates in States which have provided no regulatory functions. Regulation of intrastate rates in States that have provided regulatory functions left to those States and nothing shall interfere with rights of States to so regulate or tax. (Sec. 7.)

AUTHORITY OVER NAVIGATION STRUCTURES.—Provides for only one authority—the Secretary of War—recognizing that the navigation purpose is paramount; that the authority of said Secretary over navigation is, and long has been, exclusive, that the mere incident of public land occupation cannot change the real paramount purpose, and that it is not productive of real progress to divide jurisdiction. (Sec. 2.)

NAVIGATION INTERESTS.—Same as Adamson Bill. (Sec. 3.)

PENAL CLAUSE.—Provides same full penalties, except in the extreme case, the court may decree the sale of the works and the innocent stockholders of the offending company may secure such residue of their investment as may be derived from said sale. This is quite different from the Adamson Bill, under which the sins of company officers may be punished by totally destroying the investment of minority as well as majority stockholders. (Sec. 8.)

REPEAL.—In reserving the right to alter, amend or repeal, the bill respects the property rights of the grantee if injured by any change in the law. If

ADAMSON BILL—Continued

confiscation or rendering operation unprofitable through changes in the law.

This would prevent the development of water powers and the enlistment of capital more effectively than the revocable feature of the present law, for capital never would invest with such danger of total or partial loss hanging over it.

ADAMSON-SHIELDS BILL—Cont'd

the grantee builds his plant in good faith under a permit issued under the law, he is entitled to this protection in all equity and justice and such a condition is a necessity to successful financing.

APPENDIX B

COMPARATIVE REVIEW OF PUBLIC LANDS WATER POWER

H. R. 16673 (FERRIS BILL)

as passed by the House of Representatives.

1. THE LEASE — HOW MADE.—The Secretary of the Interior is "*authorized and empowered*" to lease power site lands—i. e., he may use his discretion both as to the granting or the refusing of the lease to an applicant and in contested cases as to the selection of the favored applicant. (Sec. 1.)

2. SPECIFIC TERMS.—Leases granted "under general regulations to be fixed" by the Secretary, and "under such terms and conditions as he may prescribe, not inconsistent with the terms of the Act." That is, the Secretary is given absolute discretion as to specific terms not covered by the Act and may discriminate between parties. (Sec. 1.)

3. PUBLIC LANDS EXEMPTED FROM TERMS OF BILL.—National parks and military reservations; in the case of other reservations no lease shall be given unless the chief officer of the Department in charge shall certify that the same will not interfere with the purposes of the reservation. (Sec. 1.)

4. QUALIFICATIONS OF LESSEE.—Citizens of the United States or any association of such or any corporation duly organized under State or Federal laws. (Sec. 1.)

5. PERIOD OF LEASE.—Discretionary with Secretary of the Interior but not longer than 50 years, and at the end thereof the Government may do one

H. R. 16673 (FERRIS BILL)

as reported by Senate Committee on Public Lands.

1. THE LEASE — HOW MADE.—The Secretary of the Interior is "*directed*" to lease to any properly qualified person who *shall comply with the law passed by Congress*, and who is authorized by the State to use the water. (Sec. 1.)

2. SPECIFIC TERMS.—Leases granted "under general regulations to be fixed" by the Secretary "not inconsistent with the terms of the Act." That is, the Secretary must treat all applicants alike. (Sec. 1.)

3. PUBLIC LANDS EXEMPTED FROM TERMS OF BILL.—Same as House Bill. (Sec. 1.)

4. QUALIFICATIONS OF LESSEE.—Same as in House Bill. (Sec. 1.)

5. PERIOD OF LEASE.—Fifty years, unless the applicant and the Secretary agree on a shorter period as the applicant may elect, and at the

APPENDIX B

MEASURES PROPOSED OR CONSIDERED IN 63d CONGRESS

S. 6712 (JONES BILL)

which was not reported by Senate Committee on Public Lands.

1. THE GRANT — HOW MADE.—The bill makes affirmative grant to qualified applicants who shall comply with its terms and submit proof of their right to use the water. (Sec. 1.)

2. SPECIFIC TERMS.—Set forth in the bill or determined by State laws.

3. PUBLIC LANDS EXEMPTED FROM TERMS OF BILL.—None.

4. QUALIFICATIONS OF GRANTEE.—Any State or municipal corporation or any mutual or public service corporation or person authorized by the State to conduct power business, except in developments of 1,000 h. p. or less, in which case no special qualifications are necessary. (Secs. 1 and 13.)

5. PERIOD OF GRANT.—Fifty years, after which the Government may take over the property at any time, either for itself or for conveyance to a third

S. 7171 (WORKS BILL)

which was not reported by Senate Committee on Public Lands.

1. THE GRANT — HOW MADE.—Affirmative grant to qualified applicants who shall submit proof of right to use the water under State laws. (Sec. 1.)

2. SPECIFIC TERMS.—Set forth in the bill or determined by State laws.

3. PUBLIC LANDS EXEMPTED FROM TERMS OF BILL.—None; except in National forests, National monuments and Indian reservations, the location shall be such as not to interfere with the purposes of said reservations. (Sec. 1.)

4. QUALIFICATIONS OF GRANTEE.—Same as Jones Bill. (Sec. 1.)

5. PERIOD OF GRANT.—Runs coterminous with right of grantee or his successors to use the water under State authority, and if water rights are lost

H. R. 16673—Continued

of four things: (a) take over the property; (b) lease to the original lessee; (c) lease to a new party who may be favored by the administrative officer, notwithstanding the fact that the original lessee may have conducted himself lawfully and honorably; (d) may do nothing and thereby leave the property without title. There is absolutely no guaranty that the Government will make any disposition of the lease at expiration. This means an impaired and uncertain investment from the start. (Secs. 1, 5 and 6.)

6. CONSTRUCTION AND OPERATION.—Provides for diligent, orderly and reasonable development and continuous operation subject to market conditions. (Sec. 2.)

7. LEASES TO STATES AND MUNICIPALITIES.—The Secretary may give preference to applications for leases by States and municipalities. (Sec. 1.)

8. SALES TO ONE CONSUMER.—The Bill forbids a lessee to contract for the delivery of more than 50 per cent of his output to one person irrespective of whether such a limitation would prevent financing, prohibit large manufacturing development, or allow a portion of the product of a developed site to go to waste. (Sec. 2.)

9. REGULATION.—Rates and service and the issuance of securities are to be regulated by the Secretary of the Interior in interstate cases; also in intrastate cases where States have not provided for regulatory procedure. (Secs. 3 and 9.)

H. R. 16673 (Senate)—Continued

end thereof the Government may do one of four things: (a) take over the property; (b) lease to the original lessee who has preference right over any other party upon such terms and conditions as then existing law shall authorize; (c) lease to a new party if original lessee fails to renew; (d) may do nothing, in which event the lease may continue under terms as may then be in force. (Secs. 1, 5 and 6.)

6. CONSTRUCTION AND OPERATION.—Same as House Bill.

7. LEASES TO STATES AND MUNICIPALITIES.—Same as House Bill. (Sec. 1.)

8. SALES TO ONE CONSUMER.—The Bill makes no fanciful and artificial limitations on the sale of energy and puts no shackles on commendable industrial enterprise, leaving the determination of offenses against the law of the land to the courts, under procedure prescribed by the sovereign.

9. REGULATION. — Interstate rates and service and the issuance of securities are to be regulated by the Interstate Commerce Commission. Intrastate rates, service and security issues in those States which have provided no regulatory procedure are to be regulated by the Secretary of the Interior. (Secs. 3 and 9.)

S. 6712—Continued

party. In the event that the United States does nothing, the grant continues as originally given. This preserves title to the property and prevents depression of investment. (Sec. 2.)

6. CONSTRUCTION AND OPERATION.—The grantee is given two years to commence construction and five years further to complete if so much time is necessary under continuous and diligent procedure. Extensions may be granted by President when, in his judgment, the public interest will be promoted thereby. The grantee must operate to the extent deemed by the Secretary necessary to supply adequately the needs of the available market. (Sec. 6.)

7. GRANTS TO STATES AND MUNICIPALITIES.—The Bill commands that the grant approved by the Secretary shall be the one which "will promote the highest and greatest practicable use of the water resources involved." (Sec. 2.)

8. SALES TO ONE CONSUMER.—See Ferris Bill (Senate) opposite.

9. REGULATION.—The Bill does not provide for grants in States which have not provided for regulation of public utilities. Rates and service in other States are to be regulated by such States. The United States reserves the right to regulate interstate rates and service. (Secs. 1 and 7.)

S. 7171—Continued

or forfeited so that the water cannot be used in connection with the land, said land reverts to the United States or to such successor in interest as may possess rights to use the water. If terminated by State, the land reverts to the United States. (Sec. 5.)

6. CONSTRUCTION AND OPERATION.—The grantee is given one year to commence construction and five years to complete, if so much time is necessary under continuous and diligent procedure. The grantee is required to operate according to the public demand for power. (Sec. 5.)

7. GRANTS TO STATES AND MUNICIPALITIES.—The matter of preferential grants is settled by the State. The grant is made to the applicant holding water rights from the State. (Sec. 2.)

8. SALES TO ONE CONSUMER.—See Ferris Bill (Senate) opposite.

9. REGULATION. — Intrastate rates and service are placed under State authority. Interstate rates and service are placed under Interstate Commerce Commission. (Sec. 7.)

H. R. 16673—Continued

10. COMBINATIONS IN RESTRAINT OF TRADE.—The Bill forbids all acts of the lessee which accomplish restraint of trade. (Sec. 3.)

11. LAWFUL COMBINATIONS.—A lawful combination may be prevented by the Secretary of the Interior if in any particular case it does not please him. (Sec. 3.)

12. SALES TO DISTRIBUTING COMPANIES.—The Bill forbids, except upon consent of an administrative officer, the sale of power to a distributing company. It is immaterial, according to this bill, whether the lessee, by such sale, does or does not restrain trade, does or does not benefit the public, or whether the producer or the distributor is or is not regulated by a sovereign as to rates, service, etc. The decision of the Secretary, wise or unwise, is final. (Sec. 4.)

13. ASSIGNMENT OF LEASE. — No Lease assignable or transferable without consent of Secretary of the Interior (Sec. 4). This provision accomplishes nothing except the further embarrassment of a company that may be in financial straits. Neither the Government nor the people care who holds a lease so long as the holder is under control.

14. LIENS OR MORTGAGES.—No lien can be created on any water power property developed under a lease, whether the land so leased constitutes all or only a minute part of the development, without the approval of the Secretary of the Interior. (Sec. 4.)

15. HOW THE PROPERTY MAY BE TAKEN OVER BY THE UNITED STATES.—At any time after three years immediately prior to lease expiration, United States may give three years' notice and take over all the property acquired by the lessee, dependent in whole or in part for its usefulness on the continuance of the lease. (Sec. 5.)

H. R. 16673 (Senate)—Continued

10. COMBINATIONS IN RESTRAINT OF TRADE.—Same as House Bill. (Sec. 3.)

11. LAWFUL COMBINATIONS.—Same as House Bill. (Sec. 3.)

12. SALES TO DISTRIBUTING COMPANIES.—The Bill makes no mention of sales to distributing companies, places no obstacle in the path of proper development and leaves to the judiciary the duty of determining whether any act of the producer or distributor is in violation of law or prejudicial to the public interest. The Bill assumes, by inference, that both producer and distributor are subject to regulation in the public interest and that an offense is subject to punishment by sovereign.

13. ASSIGNMENT OF LEASE.—Leases may be assigned or transferred, but the successor is bound by all the obligations to Government of the original lessee.

14. LIENS OR MORTGAGES.—No lien can be created on the *land leased* without the approval of the Interstate Commerce Commission. (Sec. 4.)

15. HOW THE PROPERTY MAY BE TAKEN OVER BY THE UNITED STATES.—At any time after three years immediately prior to lease expiration, United States may give three years' notice and take over all the property dependent in whole or in part for its usefulness on continuance of the lease, or upon mutual agreement with the les-

S. 6712—Continued

10. COMBINATIONS IN RESTRAINT OF TRADE.—The Bill forbids all acts of the grantee which result in restraint of trade. (Sec. 3.)

11. LAWFUL COMBINATIONS. — The Bill makes no provision for giving the Secretary authority to permit combinations of plants or lines, because as the bill defines the acts and practices which constitute restraint of trade, the violation of the law is left to determination of the local body charged with regulation, or to existing Federal law.

12. SALES TO DISTRIBUTING COMPANIES.—Same as Ferris Bill (Senate).

13. ASSIGNMENT OF LEASE.—Left to State regulation. (Sec. 7.)

14. LIENS AND MORTGAGES.—Left to State regulation. (Sec. 7.)

15. HOW THE PROPERTY MAY BE TAKEN OVER BY THE UNITED STATES.—Upon expiration of 50-year period or any time thereafter, Congress may provide for termination of grant and disposition of all the property dependent for its success on the rights granted. (Sec. 5.)

S. 7171—Continued

10. COMBINATIONS IN RESTRAINT OF TRADE.—Covered by existing Federal and State laws.

11. LAWFUL COMBINATIONS.—Same as Jones Bill.

12. SALES TO DISTRIBUTING COMPANIES.—Same as Ferris Bill (Senate).

13. ASSIGNMENT OF LEASE.—The bill provides that assignment or transfer of water rights under State laws carries with it the lands granted by the United States for the use of the water. (Sec. 5.)

14. LIENS AND MORTGAGES.—Left to State regulation. (Sec. 10.)

15. HOW THE PROPERTY MAY BE TAKEN OVER BY THE UNITED STATES.—Whenever the right to use the waters for the purposes of the grant shall be forfeited or otherwise terminated by the State wherein the land is situated, or by final adjudication in the courts, the land reverts to the United States. (Sec. 5.)

H. R. 16673—Continued

16. COMPENSATION FOR PROPERTY TAKEN OVER.—The Bill provides for payment on taking over, at expiration of lease, lands, water rights, etc., at *actual cost*, and of improvements at fair value, or, in other words, depreciated value, exclusive of intangibles. The lessee is thereby denied the benefit of any appreciation of property, but is penalized for full depreciation. (Sec. 5.)

17. ELEMENTS OF VALUE EXCLUDED FROM COMPENSATION.—The Bill excludes: (a) the value of the franchise; (b) good will; (c) profits to be earned on pending contracts; (d) all other intangible elements. (Sec. 5.)

All the above are fair to the investor except (d) (Sec. 5). Intangible elements cover many things necessary to the business for which legitimate cash expenditure is required. To deprive the investor of these would be nothing but confiscation of a goodly portion of the actual value of the property.

18. CONTRACTS FOR THE SALE OF POWER BEYOND LEASE PERIOD.—Contracts for the sale or delivery of power for periods not exceeding 20 years beyond the life of the lease may be made if, *in the judgment of the Secretary of the Interior*, public interest justifies. No recognition is given to the fact that the States may possess some sovereignty over contracts executed within them. Furthermore, if at the end of the thirtieth or fortieth year of the lease, an industrial condition should arise which required a 50-year contract, or if even at the beginning of the lease a perpetual contract should be required for irrigation, the lessee would be powerless. (Sec. 7.)

19. FEDERAL TAX.—For the occupancy and use of Government lands, the Secretary of the Interior may use his discretion in raising revenue (which sovereign authority the Constitution gives only to Congress) and may

H. R. 16673 (Senate)—Continued

see, the United States may take a severable and complete unit of any such power system. (Sec. 5.)

16. COMPENSATION FOR PROPERTY TAKEN OVER.—The Bill provides for payment of fair value of property, which includes reasonable appreciation of property as well as depreciation. (Sec. 5.)

17. ELEMENTS OF VALUE EXCLUDED FROM COMPENSATION.—The Bill excludes: (a) rights of way or other property of the United States under lease; (b) value of the franchise; (c) good will; (d) going concern; (e) future profits from pending contracts or prospective revenues, profits or dividends. (Sec. 5.) "Going concern" has been declared legitimate by the U. S. Supreme Court. It represents legitimate cash paid by the business, and to deprive the investor means non-payment for a portion of actual value of property.

18. CONTRACTS FOR THE SALE OF POWER BEYOND THE LEASE PERIOD.—May extend twenty-five years beyond lease period if approved by State public service authorities and Secretary of Interior. (Sec. 7.)

19. FEDERAL TAX.—Same as Ferris Bill (House).

S. 6712—Continued

S. 7171—Continued

16. COMPENSATION FOR PROPERTY TAKEN OVER.—See Ferris Bill (Senate) opposite. (Sec. 5.)

17. ELEMENTS OF VALUE EXCLUDED FROM COMPENSATION.—The Bill excludes as an element of value the use of or the right to use the lands acquired under the terms of the Act. (Sec. 3.) For the other elements, Congress would provide in each case. (Sec. 5.)

18. CONTRACTS FOR THE SALE OF POWER BEYOND LEASE PERIOD.—Contracts for the sale or delivery of power may be made for periods extending beyond the period of lease when the public interest requires (not when required in the judgment of the Secretary) and on the approval of the appropriate State authority. (Sec. 4.)

19. LAND RENTALS. — The United States is to be paid 5 per cent interest on the appraised fair value of the public land occupied.

16. COMPENSATION FOR PROPERTY TAKEN OVER.—Settlement to be in accordance with State laws.

17. ELEMENTS OF VALUE EXCLUDED FROM COMPENSATION.—The Bill allows no compensation or value in connection with the rights obtained or used under the Act. (Sec. 4.)

18. CONTRACTS FOR THE SALE OF POWER BEYOND LEASE PERIOD.—Regulated by terms of water rights in States.

19. LAND RENTALS.—Provides that fair value of lands including enhancement by reason of special adaptability for power purposes, shall be determined. Provision for payment of said value evidently omitted by author through inadvertence.

H. R. 16673—Continued

base Federal taxes on the amount of power developed by the State's water. (Sec. 8.)

20. ACCOUNTS AND REPORTS.—Secretary of the Interior authorized to examine books and accounts and require statements and reports, notwithstanding the fact that a lessee may be operating entirely within one State and thereby is subject to State laws.

21. STATES' CONTROL OF WATER.—States' control over use of water affirmed notwithstanding the fact that many sections of the bill deprive the States of such control. (Sec. 14.)

H. R. 16673 (Senate)—Continued

20. ACCOUNTS AND REPORTS.—Same as House Bill.

21. STATES' CONTROL OF WATER.—Same as House Bill.

S. 6712—Continued

20. ACCOUNTS AND REPORTS.—The rendering of accounts and reports is left to the States, except that the United States reserves the right to do this in case of interstate service. (Sec. 7.)

21. STATES' CONTROL OF WATER.—Deference is paid directly to States' authority (Sec. 2), and nothing in the bill seeks to violate or abridge that authority.

S. 7171—Continued

20. ACCOUNTS AND REPORTS.—All under State control.

21. STATES' CONTROL OF WATER.—The whole bill is based on the assumption that the States' control of water is the main consideration.

APPENDIX C

Calendar No. 740

63D CONGRESS,
3D SESSION.

H. R. 16053

[Report No. 846.]

IN THE SENATE OF THE UNITED STATES.

AUGUST 5, 1914.

Read twice and referred to the Committee on Commerce.

DECEMBER 19, 1914.

Reported by Mr. SHIELDS, with an amendment.

[Strike out all after the enacting clause and insert the part printed in italic.]

AN ACT

To amend an Act entitled "An Act to regulate the construction of dams across navigable waters," approved June twenty-first, nineteen hundred and six, as amended by the Act approved June twenty-third, nineteen hundred and ten.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That the Act entitled "An Act to regulate the construction~~
4 ~~of dams across navigable waters," approved June twenty-~~
5 ~~third, nineteen hundred and ten, be, and the same is hereby,~~
6 ~~amended to read as follows:~~

7 ~~"SECTION 1. That when consent or authority has been~~
8 ~~or may hereafter be granted by Congress, either directly or~~
9 ~~indirectly through any duly authorized official or officials of~~

1 the United States, to any persons to construct and maintain
2 a dam for water power or other purpose across or in any of
3 the navigable waters of the United States, such dam shall
4 not be built or commenced until the plans and specifications
5 for such dam and all accessory works, together with such
6 drawings of the proposed construction and such map of the
7 proposed location as may be required for a full understanding
8 of the subject, have been submitted to the Secretary of War
9 and the Chief of Engineers for their approval, nor until they
10 shall have approved such plans and specifications and the
11 location of such dam and accessory works; and after such
12 approval it shall not be lawful to deviate from such plans
13 or specifications either before or after completion of the
14 structure unless the modification of such plans or specifica-
15 tions has previously been submitted to and received the
16 approval of the Secretary of War and the Chief of Engineers.
17 Such plans, specifications, and drawings shall be submitted
18 within two years after the date of the approval of the Act
19 authorizing the construction.

20 "SEC. 2. That as a part of such approval such condi-
21 tions and stipulations may be imposed as the Secretary of
22 War and the Chief of Engineers may deem necessary to pro-
23 tect the present and future interests of the United States,
24 which may include the condition that the persons construct-
25 ing or maintaining such dam shall construct, maintain, and

1 ~~operate in connection therewith, without expense to the~~
2 ~~United States, a lock or locks, booms, sluices, or any other~~
3 ~~structure or structures which the Secretary of War and the~~
4 ~~Chief of Engineers or Congress at any time may deem neces-~~
5 ~~sary in the interests of navigation, in accordance with such~~
6 ~~plans as they may approve; and also that whenever Con-~~
7 ~~gress shall deem such facilities necessary, the persons owning~~
8 ~~such dam shall convey to the United States, free of cost, title~~
9 ~~to such land as may be required for such constructions and~~
10 ~~approaches, and shall grant to the United States free water~~
11 ~~power or power generated from water power for building~~
12 ~~and operating such constructions, at the discretion of the~~
13 ~~Secretary of War and Chief of Engineers, may be required~~
14 ~~to maintain and operate such lock without expense to the~~
15 ~~United States. The Secretary of War may provide, as a~~
16 ~~condition of such approval, for the payment to the United~~
17 ~~States of reasonable annual charges for the benefits that~~
18 ~~accrue to the grantee by the authority given under this Act,~~
19 ~~and at the end of twenty years and every ten years thereafter~~
20 ~~the Secretary of War may readjust the annual charges as may~~
21 ~~then be just and reasonable.~~

22 ~~"SEC. 3. That as a part of said approval the Secretary~~
23 ~~of War and the Chief of Engineers shall require that the~~
24 ~~plans, specifications, and location for any dam shall be such~~
25 ~~as shall be best adapted to a comprehensive plan for the~~

1 improvement of the waterway in question for the uses of
2 navigation and for the full development of its water power
3 and for other beneficial public purposes, and best adapted to
4 conserve and utilize, in the interests of navigation and water
5 power development, the water resources of the region.

6 “SEC. 4. That as a part of the conditions and stipula-
7 tions such approval shall provide—

8 “(a) For reimbursement to the United States of all
9 expenses incurred by the United States with reference to the
10 project, including the cost of any investigation necessary for
11 the approval of the plans as heretofore provided, and for such
12 supervision of construction as may be necessary in the
13 interest of the United States.

14 “(b) For the payment to the United States of reason-
15 able charges for the benefits which may accrue to such
16 project through the construction, operation, and maintenance,
17 in and about such streams, by the United States of headwater
18 improvements of every kind, nature, and description, in-
19 cluding storage reservoirs or forested watersheds or land
20 owned, located, or reserved by the United States at the
21 headwaters of any navigable stream for the development,
22 improvement, or preservation of navigation in such stream
23 in which such dam may be located. Such charges shall be
24 fixed from time to time by the Secretary of War and Chief
25 of Engineers, based upon a reasonable compensation

1 equitably apportioned among the grantee and others similarly
2 situated upon the same stream receiving benefits by reason of
3 increase of flow past their water power structures artificially
4 caused by such headwater improvements, the total charges to
5 all such beneficiaries from any such headwater improvement
6 not to exceed in any one year an amount equal to five per
7 centum of the total investment cost, in addition to the neces-
8 sary annual expense of the operation of such headwater
9 improvement.

10 “(c) That in the construction, maintenance, and opera-
11 tion of any project under this Act for the promotion of navi-
12 gation, the grantee may, with the consent of the Secretary of
13 War, use and occupy, when necessary for carrying out the
14 project, lands acquired by the United States through pur-
15 chase or condemnation and any part of the public lands with-
16 drawn by the President from entry or disposition for the
17 sole purpose of promoting navigation, which the President
18 may do, as provided in the Act entitled, ‘An Act to authorize
19 the President of the United States to make withdrawal of
20 public lands in certain cases,’ approved June twenty-fifth,
21 nineteen hundred and ten. For any of such lands so used
22 the grantee shall pay to the United States such charges as
23 may be fixed by the Secretary of War.

24 “(d) For the payment or securing the payment to the
25 United States of such sums and in such manner as the

1 Secretary of War and the Chief of Engineers may deem
2 reasonable and just substantially to restore conditions upon
3 such stream as to navigability, existing at the time of such
4 approval, whenever the Secretary of War and the Chief of
5 Engineers shall determine that navigation has been injured
6 by reason of the construction, maintenance, and operation of
7 such dam and its accessory works.

8 “SEC. 5. That the right is hereby reserved to the
9 United States to construct, maintain, and operate, in con-
10 nection with any dam built in accordance with the provisions
11 of this Act, a suitable lock or locks, booms, sluices, or any
12 other structures for navigation purposes, and the operation of
13 navigation facilities which shall be constructed as a part of or
14 in connection with any dam built under the provisions of
15 this Act, whether at the expense of such grantee or of
16 the United States, shall at all times be subject to such
17 reasonable rules and regulations in the interest of navigation,
18 including the control of the level of the pool caused by
19 any such dam, as shall be made by the Secretary of War
20 and Chief of Engineers, and in the use and operation of such
21 navigation facilities the interests of navigation shall be para-
22 mount to the uses of such dam by such grantee for power
23 purposes. Such rules and regulations may include the
24 maintenance and operation by such grantee, at its own
25 expense, of such lights and other signals as may be directed

1 by the Secretary of War and Chief of Engineers and such
 2 fishways as shall be prescribed by the Secretary of Com-
 3 merce, and for failure to comply with any such rule or regula-
 4 tion such grantee shall be deemed guilty of a misdemeanor,
 5 and upon conviction thereof shall be subject to a fine of not
 6 less than \$500 for each month's default, in addition to other
 7 penalties herein prescribed or provided by law.

8 "SEC. 6. That the persons constructing, maintaining,
 9 or operating any dam or appurtenant or accessory works, in
 10 accordance with the provisions of this Act, shall be liable
 11 for any damage that may be inflicted thereby upon private
 12 property, either by overflow or otherwise.

13 "SEC. 7. That any grantee who shall fail or refuse to
 14 comply with the lawful order of the Secretary of War, made
 15 in accordance with the provisions of this Act, shall be deemed
 16 guilty of a misdemeanor, and on conviction thereof shall be
 17 punished by a fine not exceeding \$1,000, and every month
 18 such grantee shall remain in default shall be deemed a new
 19 offense and subject such grantee to additional penalties
 20 therefor; and in addition to said penalties the Attorney
 21 General may, on request of the Secretary of War, institute
 22 proper proceedings in the district court of the United States
 23 in the district in which such structure or any of its accessory
 24 works may, in whole or in part, exist, for the purpose of
 25 having such violation stopped by injunction, mandamus, or

1 ~~other process; and any such district court shall have juris-~~
2 ~~diction over all such proceedings and shall have the power to~~
3 ~~make and enforce all writs, orders, and decrees necessary to~~
4 ~~compel the compliance with the requirements of this Act and~~
5 ~~the lawful orders of the Secretary of War and the perform-~~
6 ~~ance of any condition or stipulation imposed under the pro-~~
7 ~~visions of this Act; and if the unlawful maintenance and~~
8 ~~operation are shown to be such as shall require a revoca-~~
9 ~~tion of all rights and privileges held under authority of this~~
10 ~~Act, the court may decree such revocation. In case of such~~
11 ~~a decree, the court may wind up the business of such grantee~~
12 ~~conducted under the rights in question, and may declare~~
13 ~~such dam and accessory works to be an unreasonable obstruc-~~
14 ~~tion to navigation and cause their removal at the expense of~~
15 ~~the grantee owning or controlling the same, except when~~
16 ~~the United States has been previously reimbursed for such~~
17 ~~removal, or may provide for the sale of the dam and all~~
18 ~~accessory and appurtenant works constructed under au-~~
19 ~~thority of this Act for the further development of water~~
20 ~~power, and may make and enforce such other and further~~
21 ~~orders and decrees as equity demands; and in case of such~~
22 ~~a sale for the further development of water power the vendee~~
23 ~~shall take the rights and privileges and shall perform~~
24 ~~the duties which belonged to the previous grantee, and shall~~
25 ~~assume such outstanding obligations and liabilities aris-~~

1 ing out of the maintenance and operation of said dam and
2 accessory works for power purposes as the court may deem
3 equitable in the premises.

4 “SEC. 8. That no rights granted under the provisions
5 of this Act and no property or project installed and operated
6 under the provisions or benefits of this Act shall be assigned
7 or transferred except upon the written consent of the Sec-
8 retary of War, except by trust deed or mortgage issued for
9 the purpose of financing the business of such owner, and
10 any successor or assign of such property or project or of
11 any rights accruing hereunder, whether by voluntary trans-
12 fer, judicial sale, or foreclosure sale or otherwise, shall be
13 subject to all the conditions of the approval under which
14 such rights are held, and also subject to all the provisions
15 and conditions of this Act to the same extent as though
16 such successor or assign were the original owner hereunder.

17 “SEC. 9. That the rights granted herein shall continue
18 for a period of fifty years from and after the date of the
19 original approval, unless sooner revoked or forfeited as pro-
20 vided for in this Act.

21 “SEC. 10. That upon not less than two years' notice
22 prior to the expiration of any grant made hereunder, and at
23 any time after the expiration of such grant, upon six months'
24 notice, the United States, or any person authorized by Con-

gress, shall have the right to take over all of the property of the grantee necessary and useful for the generation, transmission, or distribution of power. Such property shall include the lands or interests in lands acquired or used for the purposes of the development and transmission of power, the dam and other structures, and the equipment necessary and useful for the generation of power, and the transmission system from generation plant to initial points of distribution, and the lock or locks or other aids to navigation, but shall not include any other property whatsoever. Before taking possession the United States or the person authorized by Congress shall pay therefor (first) the actual cost to the grantee of lands or any interests therein purchased and used by the grantee in the generation and distribution of power, and (second) the fair value of the other properties taken over, together with the cost to the grantee of the lock or locks or other aids to navigation and all other capital expenditures required by the United States in assuming all contracts for electrical energy extending beyond the granting period which have had or may have the approval of the Secretary of War, and which were entered into in good faith and at a reasonable rate. The actual cost of lands or interests therein and the fair value of other property shall be determined by agreement between the Secretary of War and the owners of such property, and in the event of their failure to agree then by

1 proceedings instituted by the United States, or by the per-
2 son authorized by the United States, in the district court
3 of the United States within which any portion of such dam-
4 may be located.

5 “In determining the fair value of the property other than
6 lands or interests in lands allowance shall be made for de-
7 terioration, if any, of the existing structures and transmission
8 lines, and no value shall be claimed or allowed for the rights
9 hereby granted, for good will, going concern, profit in pend-
10 ing contracts for electrical energy or for other conditions of
11 current or prospective business or for any other intangible
12 element.

13 “SEC. 11. That in all cases where the electric current
14 generated from or by any of the projects provided for in this
15 Act, including leases under section fourteen hereof, shall
16 enter into interstate or foreign commerce, the rates, charges,
17 and service for the same to the consumers thereof shall be just
18 and reasonable, and every unjust and unreasonable and un-
19 duly discriminatory charge, rate, or service therefor is hereby
20 prohibited and declared to be illegal; and whenever the
21 Secretary of War shall be of the opinion that the rates or
22 charges demanded or collected on the service rendered for
23 such electric current are unjust, unreasonable, or unduly dis-
24 criminatory, upon complaint made therefor and full hearing
25 thereon, the Secretary of War is hereby authorized and em-

1 powered to determine and prescribe what shall be the just
2 and reasonable rates and charges therefor to be observed as
3 the maximum to be charged and the service to be rendered;
4 and in case of the violation of any such order of the Secretary
5 of War the provisions of this Act relative to forfeiture and
6 failure to comply shall apply. That in the valuation for
7 rate-making purposes of the property existing under said
8 approval of the project there may be considered any lock
9 or locks, or other aids to navigation, and all other capital
10 expenditures required by the United States, but no value
11 shall be claimed or allowed for the rights hereby granted for
12 good will, going concern, or any other intangible value.

13 ~~“The Secretary of War is further authorized and~~
14 ~~directed to include among the conditions for his approval of~~
15 ~~any plans or any project herein provided, including leases~~
16 ~~under section fourteen hereof, as an express condition~~
17 ~~thereof, a clause reserving to the Secretary of War the~~
18 ~~same rights, powers, and duties set forth in this section,~~
19 ~~together with the same penalty for violation thereof: *Pro-*~~
20 ~~*vided,* That whenever the State in which such current shall~~
21 ~~be used shall have provided by law adequate regulation for~~
22 ~~rates, charges, and service to the consumers for such electric~~
23 ~~current and such regulation shall not be unduly discrimina-~~
24 ~~tory or unjust against the service or charges in any other~~
25 ~~State arising from the use of the power from the same~~

1 project, and such facts shall be established to the satisfaction
2 of the Secretary of War, then in such case the provisions of
3 this section shall not apply to the rates, charges, and service
4 in and for such State.

5 “That, except upon the written consent of the Secretary
6 of War, no sale or delivery of power shall be made to a dis-
7 tributing company, except in case of an emergency.

8 “The Secretary of War shall have the right to provide
9 rules and regulations for uniform accounting, to examine all
10 books and accounts of grantees under the terms of this Act,
11 to require them to submit statements, representations, or
12 reports, annual or special, including full information as to
13 assets and liabilities, capitalization, cost of project, cost of
14 operation, the production, use, transmission and sale of
15 power. All such statements, representations and reports
16 shall be upon oath unless otherwise specified, and in such
17 form and on such blanks as the Secretary of War may
18 require, and any person making any false entry, statement,
19 representation or report under oath shall be subject to pun-
20 ishment as for perjury.

21 “SEC. 12. That the grantee shall commence the con-
22 struction of the dam and accessory works within one year
23 from the date of the approval herein provided, and shall
24 thereafter, in good faith and with due diligence, prosecute
25 such construction, and shall, within the further term of three

1 years, complete the dam and afterwards shall, within such
2 times as the Secretary of War and the Chief of Engineers
3 shall prescribe, put in commercial operation such part of the
4 ultimate development as the Secretary of War and the Chief
5 of Engineers shall deem necessary to supply the reasonable
6 needs of the then available market, and shall, from time to
7 time thereafter, construct such portion of the balance of such
8 ultimate development as said Secretary of War and Chief of
9 Engineers may direct and within the time specified by said
10 Secretary of War and Chief of Engineers so as to supply
11 adequately the reasonable market demands until such ulti-
12 mate development shall be completed; and extensions of the
13 periods herein specified, not to exceed two years, may be
14 granted by the Secretary of War, on recommendation of the
15 Chief of Engineers, when, in his judgment, the public interest
16 will be promoted thereby. In case the grantee shall not
17 commence actual construction within the time herein pre-
18 scribed, or as extended by the Secretary of War, then the
19 authority as to such grantee shall terminate, and in case any
20 dam and accessory works be not completed within the time
21 herein specified or extended as herein provided, then the At-
22 torney General, upon the request of the Secretary of War,
23 shall institute proper proceedings in the proper district court
24 of the United States for the revocation of said authority, the
25 sale of the works constructed, and such other equitable relief

1 as the case may demand, as provided for in section seven of
2 this Act.

3 "SEC. 13. That the right to alter, amend, or repeal this
4 Act is hereby expressly reserved as to any and all dams
5 which may be authorized in accordance with the provisions
6 of this Act. In such case the United States shall incur
7 no liability for the alteration, amendment, or repeal thereof
8 to the owner or owners or any other persons interested in
9 such dam.

10 "SEC. 14. That the Secretary of War be, and he is
11 hereby, authorized to enter into leases for the use of surplus
12 water and water power generated at dams and works con-
13 structed wholly or in part by the United States in the inter-
14 ests of navigation at such rates, on such terms and con-
15 ditions, and for such periods of time not to exceed fifty years,
16 and with such provision for the periodical readjustment of
17 rentals as may seem to him just, equitable, and expedient,
18 subject, however, to the provisions of this Act governing
19 the authorization, maintenance, and operation of power
20 plants and to all regulations governing the use and dispo-
21 sition of the power, so far as the same may be applicable;
22 and all such leases, the parties thereto, and the terms and
23 conditions thereof, shall be reported annually to Congress:
24 *Provided*, That said Secretary of War, in making such leases,

1 shall give preference to any municipal corporation or other
2 public corporation not operated for private profit.

3 “SEC. 15. That no rights or privileges granted under
4 this Act and no works constructed, maintained, and operated
5 under the provisions of this Act shall be owned, trusteeed,
6 or controlled by any device or in any manner so that they
7 may form a part of, or in any manner effect, a combination
8 in the form of an unlawful trust or form the subject of an
9 unlawful contract or conspiracy to limit the output of electric
10 energy or in restraint of the generation, sale, or distribution
11 of electric energy, or the exercise of any other business
12 contemplated: *Provided, however,* That it shall be lawful
13 under the approval of the Secretary of War for different
14 grantees to exchange and interchange currents, to assist one
15 another whenever necessary, by supplementing the currents
16 or power, and enable any grantee to secure assistance to
17 carry on the business and supply his customers, accounting
18 therefor and paying therefor under regulations to be pre-
19 scribed by the Secretary of War.

20 “~~In no case shall such an arrangement be permitted~~
21 ~~to raise the price, render unjust or unfair any practice, work,~~
22 ~~or discrimination, or operate in restraint of trade.~~

23 “~~If any grantee shall violate the provisions of this~~
24 ~~section it shall forfeit all rights and privileges conferred by~~
25 ~~this Act.~~

1 ~~"SEC. 16. That the word 'persons' as used in this Act~~
2 ~~shall be construed to import both the singular and the plural,~~
3 ~~as the case demands, and shall include corporations, com-~~
4 ~~panies, and associations. The word 'dam' as used in this~~
5 ~~Act shall be construed to import both the singular and plural,~~
6 ~~as the case demands.~~

7 ~~"SEC. 17. That all of the provisions in sections two,~~
8 ~~three, four, five, nine, ten, eleven, and fifteen of this Act~~
9 ~~fixing conditions of the consent of Congress and regulating~~
10 ~~practices and charges between the grantees and their cus-~~
11 ~~tomers for the construction, maintenance, and operation of~~
12 ~~dams in the navigable waters of the United States shall~~
13 ~~apply alike to all existing enterprises in operation or pre-~~
14 ~~viously authorized in the navigable waters of the United~~
15 ~~States in which the approval and supervision of the Secretary~~
16 ~~of War and Chief of Engineers are required, as well as to~~
17 ~~new projects in the navigable waters of the United States~~
18 ~~for which the consent of Congress may hereafter be granted,~~
19 ~~in the construction, maintenance, and operation of which the~~
20 ~~approval and supervision of the Secretary of War and Chief~~
21 ~~of Engineers shall be required. All conflicting provisions~~
22 ~~contained in any previous Act of Congress granting consent~~
23 ~~for the construction, maintenance, and operation of any~~
24 ~~dam in the navigable waters of the United States in the~~

1 construction, maintenance, and operation of which the ap-
2 proval and supervision of the Secretary of War and the Chief
3 of Engineers were required are hereby repealed, and all
4 such previous authorizations are so altered, amended, and
5 modified hereby as to conform to all the conditions and pro-
6 visions in said sections two, three, four, five, nine, ten,
7 eleven and fifteen of this Act.

8 “SEC. 18. That the provisions of this Act shall not
9 apply to irrigation or power dams or grants to municipal
10 corporations affecting the use of water or water power for
11 municipal purposes, or other projects under the jurisdiction
12 of the Secretary of the Interior or the Secretary of Agricul-
13 ture upon the public lands of the United States.”

14 *That the Act entitled “An Act to regulate the construction*
15 *of dams across navigable waters,” approved June twenty-*
16 *third, nineteen hundred and ten, be, and the same is hereby,*
17 *amended to read as follows:*

18 “Section 1. That the consent of Congress is hereby
19 given to any persons, as hereinafter defined, after obtaining
20 the permit of the Secretary of War as hereinafter pro-
21 vided, to construct, maintain, and operate a dam or
22 dams or diversion structures, and accessory works, for
23 water power or other purposes across, in, or along any of
24 the navigable waters of the United States; and such grantee
25 and such permit shall at all times be subject to the pro-

visions of this Act and also subject to such conditions as the Secretary of War shall, in accordance with the provisions of this Act, make a part of such permit. That the word 'persons' as used in this Act shall be construed to mean both the singular and plural as the case demands, and shall also include States, political subdivisions of States, municipal corporations, corporations, companies, and associations; and the term 'grantee' herein shall mean any such persons to whom shall be granted a permit as herein provided: Provided, That whenever the primary purpose of the grant or permit is to furnish power for a public-utility purpose the grantee must be a State, or a municipal corporation, or a political subdivision of a State, or a public-service agent of a State, or a public-utility corporation organized and constituted under the laws of a State or the United States, authorized to engage in the business of furnishing water, heat, or electric energy for public or private use, and whose rates and charges and service shall be subject to regulation by a duly constituted commission or other agency of said State or States; but in any case where any State has not made provision for authorizing municipal corporations, political subdivisions of the State, or public-utility corporations or agencies to engage in said business or has not provided for regulating their rates, charges, and service, the qualifications of the grantee prescribed in this proviso shall not apply,

1 *and in such cases the grantee shall have the qualifications*
2 *prescribed elsewhere in this section, and the rates, charges,*
3 *and service of such grantee shall be subject to regulation by*
4 *the Secretary of War, as provided in section seven of this*
5 *Act; and no transfer of any such permit or of the rights there-*
6 *under granted, except by trust deed or mortgage issued for*
7 *the bona fide purpose of financing the business of such*
8 *grantee, shall be made by any grantee, without the approval*
9 *of the Secretary of War, to any transferee not having the*
10 *qualifications herein specified for a grantee hereunder, and*
11 *any successor or assign of the rights of any such grantee,*
12 *whether by voluntary transfer, judicial sale, or foreclosure*
13 *sale or otherwise, shall be subject to all the conditions of the*
14 *permit under which such rights are held by such grantee, and*
15 *also subject to all the provisions and conditions of this Act to*
16 *the same extent as though such successor or assign were the*
17 *grantee hereunder.*

18 *“Sec. 2. That the Secretary of War may grant a per-*
19 *mit or permits for such dam or dams and accessory works*
20 *upon the following conditions:*

21 *“First. The plans and specifications for such dam and*
22 *all accessory works, together with such drawings of the*
23 *proposed construction and such maps of the proposed loca-*
24 *tion as may be required for a full understanding of the sub-*
25 *ject, shall be submitted to the Secretary of War and the*

1 Chief of Engineers, and when approved shall be made a
2 part of such permit; and thereafter no change in such plans
3 or specifications shall be made except as such change shall
4 be approved and made a part of such permit by the Secre-
5 tary of War and the Chief of Engineers.

6 "Second. The plans, specifications, and location for
7 any dam shall be such as in the judgment of the Secretary
8 of War shall be best adapted to a comprehensive plan for
9 the improvement of the waterway in question for the uses of
10 navigation and for the full development of its water power
11 and for other beneficial public purposes, and best adapted
12 to conserve and utilize, in the interests of navigation and
13 water developments, the water resources of the region.

14 "Third. As part of the conditions of such permit the
15 Secretary of War may, in so far as he deems the same
16 reasonably necessary to promote the present and future
17 interests of navigation and consistent with a reasonable in-
18 vestment cost to such grantee, make any or all of the fol-
19 lowing requirements: (a) That such grantee shall, to the
20 extent necessary to preserve navigation facilities at least
21 equivalent to those existing prior to the construction of
22 such dam, construct, in whole or in part, without ex-
23 pense to the United States, in connection with any such dam,
24 a lock or locks, booms, sluices, or other structures for
25 navigation purposes, in accordance with plans, specifica-

1 tions and conditions approved by the Secretary of
2 War and made a part of such permit; (b) that such
3 grantee shall furnish free of cost power for the operation of
4 the same; (c) that in case such navigation facilities shall
5 not be made a part of such original construction at the
6 expense of the grantee, then, whenever the United States
7 shall deem such navigation facilities necessary, the grantee
8 shall convey to the United States, free of cost, such of its land
9 and its right of way and permit such control of pools as may
10 be required for such navigation facilities, and shall furnish
11 free of cost power for the operation of the same; (d) that
12 such grantee shall reimburse the United States for the cost of
13 any investigation necessary for the approval of the plans as
14 herein provided and for such supervision of construction as
15 may be necessary in the interest of the United States; (e) that
16 such grantee shall pay to the United States reasonable charges
17 in consideration of the benefits accruing to and used by such
18 grantee through the construction, operation and maintenance
19 by the United States of headwater improvements, includ-
20 ing storage reservoirs, on any such stream, such charges to
21 be fixed from time to time by the Secretary of War and to
22 be based upon a reasonable compensation proportionate to the
23 benefit actually received by the grantee by reason of any in-
24 crease of flow past or over the water-power structures arti-
25 ficially caused by such headwater improvement; and all

1 moneys received from such charges are hereby reserved and
 2 appropriated as a special fund in the Treasury to be known
 3 as 'The headwater improvement fund,' from which fund ex-
 4 penditures for headwater improvements and maintenance may
 5 be made by and in the discretion of the Secretary of War; (f)
 6 that such grantee in the construction, maintenance, and opera-
 7 tion of such dam or diversion structure and accessory works
 8 may, with the authority of the Secretary of War, occupy
 9 and use, to the extent necessary for the project, any lands
 10 of the United States, including the public lands; and any part
 11 of the public lands may, on certification by the Secretary
 12 of War that the same is required for navigation purposes;
 13 be withdrawn by the President for said purpose as provided
 14 in the Act entitled 'An Act to authorize the President of the
 15 United States to make withdrawal of public lands in certain
 16 cases, approved June twenty-fifth, nineteen hundred and
 17 ten;' and for any land of the United States so used and oc-
 18 cupied the grantee shall pay to the United States such
 19 reasonable charges as may be fixed by the Secretary of War;
 20 and in fixing such charges consideration shall be taken of
 21 the benefits accruing from the use and occupation of such
 22 lands to the interests of navigation, as well as to the business
 23 of said grantee.

24 "In fixing such conditions, or any of them, the Secre-
 25 tary of War shall also take into consideration the

1 probable cost to such grantee of construction and
2 maintenance and operation and the probable consumers'
3 rate required to produce a reasonable return upon
4 the investment required of such grantee. As between
5 contesting applicants for a permit hereunder having the
6 legal qualifications required by this Act, preference shall
7 be given to that applicant which is best qualified to expedite
8 and realize the maximum useful development of all the water
9 resources of the region; and as between such contesting ap-
10 plicants which appear equally well qualified in such respect,
11 then preference shall be given to that applicant which has
12 first complied with the laws of the State or States in which
13 the dam or diversion structure is to be constructed. In grant-
14 ing permits hereunder and fixing conditions thereof, and in
15 prescribing rules and regulations as to the maintenance and
16 operation of any structure to which this Act is applicable,
17 the Secretary of War, before acting, shall have the report
18 and advice of the Chief of Engineers.

19 “Sec. 3. That the control of the level of the pools above
20 and below such dam and of the currents developed therein
21 and of the flow of the water over and past such dam
22 and the operation of navigation facilities which shall be
23 constructed as a part of or in connection with any such dam,
24 whether at the expense of such grantee or of the United
25 States, shall at all times be subject to such rules and regula-

1 *tions as shall be deemed by the Secretary of War to be*
2 *reasonable and necessary in the interests of navigation. Such*
3 *rules and regulations may include the maintenance and*
4 *operation by such grantee, at its own expense, of such lights*
5 *and other signals as may be directed by the Secretary of War*
6 *and such other lights and signals and such fishways as may*
7 *be prescribed by the Secretary of Commerce, and for failure*
8 *to comply with any such rule or regulation such grantee shall*
9 *be deemed guilty of a misdemeanor, and upon conviction*
10 *thereof shall be punished as provided in section eight of*
11 *this Act.*

12 *“Sec. 4. That any such permit shall not have the effect*
13 *to relieve the grantee from liability for any damage occa-*
14 *sioned to the property of others by the construction, main-*
15 *tenance, or operation of any dam or of the works appurte-*
16 *nant or accessory thereto, and the United States shall in no*
17 *event be liable therefor. When grantee under the provisions*
18 *of this Act is a State, municipal corporation, or a political*
19 *subdivision of a State, or a public-service agent of a State,*
20 *or a public utility or service corporation, it may acquire*
21 *the right to use or damage any lands or property of others*
22 *necessary to the construction, maintenance, or operation of*
23 *any such dam or diversion structure or of the works appurte-*

1 *nant or accessory thereto by the exercise of the right of emi-*
2 *nent domain either under the laws of the State in which such*
3 *lands or property are located, or, in case such right can not*
4 *be acquired under the laws of such State, then under the*
5 *laws of the United States providing for the acquirement by*
6 *condemnation of lands or property for the uses of navigation.*

7 *“Sec. 5. That unless revoked for cause as provided in*
8 *section eight of this Act the rights under any such permit shall*
9 *continue for a period of fifty years from and after the date*
10 *of the completing and putting into commercial operation of*
11 *the initial installation required by the Secretary of War,*
12 *as provided in section nine of this Act, and after the expira-*
13 *tion of said fifty years such rights shall continue until re-*
14 *voked for cause as provided in section eight of this Act or*
15 *until terminated and compensation has been made to such*
16 *grantee for its property as provided in section six of this Act.*

17 *“Sec. 6. That at any time after the expiration of said*
18 *fifty years the United States may terminate the rights here-*
19 *under granted upon the giving to the grantee of one year’s*
20 *notice in writing of such termination, and upon the taking*
21 *over by the United States of all of the property of the grantee*
22 *dependent in whole or in part for its usefulness upon the*
23 *rights hereunder granted, which are necessary and appur-*
24 *tenant, or acquired and valuable or serviceable in the dis-*
25 *tribution of water, or in the generation, transmission, and*

1 *distribution of power, and upon paying to the grantee the fair*
2 *value of said property, together with the cost to the grantee*
3 *of the lock or locks, or other aids to navigation, and all other*
4 *capital expenditures required by the United States, and*
5 *assuming all contracts entered into by the grantee prior to the*
6 *receipt by it of said notice of termination which have the*
7 *approval of the duly constituted public authority having*
8 *jurisdiction thereof, or which were entered into in good faith*
9 *and at a reasonable rate, in view of all the circumstances*
10 *existing at the time such contracts were made. The fair*
11 *value of said property and the reasonableness and good faith*
12 *of such contracts shall be determined by agreement between*
13 *the Secretary of War and the grantee, and in the event of*
14 *their failure to reach unanimous agreement, then by pro-*
15 *ceedings in equity instituted by the United States in the*
16 *district court of the United States in the district within which*
17 *any portion of such dam may be located. In the determina-*
18 *tion of the value of said property for any purpose as between*
19 *such grantee and the United States or any State no value*
20 *shall be claimed by or allowed to the grantee for the rights*
21 *hereunder granted.*

22 *“Sec. 7. That whenever all or any part of the power*
23 *produced at any dam or diversion structure authorized here-*
24 *under is offered or disposed of by the grantee to the public, or*
25 *for a public utility purpose, all charges, rates, and service by*

1 any such grantee shall be reasonable, adequate, and without
2 discrimination, and shall be subject to regulation in accord-
3 ance with the laws of the State within which the service is
4 rendered: Provided, That whenever in case any State fails
5 to provide such laws for the regulation of such charges, rates
6 and service, the Secretary of War shall be of the opinion,
7 upon complaint made and full hearing thereon, that the rates
8 or charges demanded or collected and the service rendered by
9 any person or corporation to the public are unreasonable,
10 inadequate, or unduly discriminatory, he is hereby authorized
11 and empowered from time to time to determine and prescribe
12 what shall be the just and reasonable rates and charges to be
13 observed as the maximum to be charged and the service to be
14 rendered; and in case of the violation of any such order of
15 the Secretary of War, the provisions of this Act relative to
16 forfeiture shall apply: Provided further, That where the said
17 power or any part of it shall enter into interstate or foreign
18 commerce, Congress may, by proper legislation, regulate the
19 rates, charges, and services made and rendered, so as to be
20 fair and reasonable to the grantee and the public: And pro-
21 vided further, That in the valuation for rate-making purposes
22 of the property of any such grantee there shall be included the
23 cost to such grantee of the construction of the lock or locks, or
24 other aids to navigation, and all other capital expenditures re-
25 quired by the United States, but no value shall be claimed or

1 allowed for the rights hereby granted: And provided further,
2 That nothing in this Act shall be construed to prevent any
3 State in which such dam with its appurtenant property is
4 located, or in which such business is to be conducted, from
5 making and enforcing any lawful regulations, including the
6 levying of taxes, with respect to the property or business of
7 such grantee.

8 “Sec. 8. That any grantee who shall fail or refuse to
9 comply with any of the provisions of this Act or any of
10 the conditions made a part of any permit issued hereunder
11 or any regulation or lawful order of the Secretary of War,
12 made in accordance with the provisions of this Act, shall
13 be deemed guilty of a misdemeanor, and on conviction
14 thereof shall be punished by a fine not exceeding \$1,000,
15 in addition to other penalties herein prescribed or provided
16 by law, and every month such grantee shall remain in
17 default shall be deemed a new offense and subject such
18 grantee to additional penalties therefor; and in addition
19 to said penalties the Attorney General may, on request of
20 the Secretary of War, institute proper proceedings in equity
21 in the district court of the United States in the district in
22 which such structure or any of its accessory works are,
23 in whole or in part, situated, for the purpose of having such
24 violation stopped by injunction, mandamus, or other process;
25 and any such district court shall have jurisdiction over all

1 such proceedings and shall have the power to make and
2 enforce all writs, orders, and decrees necessary to compel the
3 compliance with the lawful orders and regulations of the Sec-
4 retary of War and the performance of any condition imposed
5 under the provisions of this Act; and if the unlawful main-
6 tenance and operation be deemed by the court to be such as
7 shall require, in the public interest, a decree revoking all
8 rights and privileges held under authority of this Act, the
9 court may decree such revocation, and in case of such a
10 decree the court may wind up the business of such grantee
11 conducted under the rights in question and may decree the
12 sale of the dam or diversion structure and all appurtenant
13 property constructed or acquired under authority of this
14 Act, and distribute the proceeds to the parties entitled to the
15 same, and may make and enforce such other and further
16 orders and decrees as equity and justice may require; and in
17 case of such sale the vendee shall take the rights and privileges
18 and shall perform the duties which belonged to the grantee,
19 and shall assume all outstanding obligations and liabilities of
20 the grantee which the court may deem equitable in the prem-
21 ises; and in case no purchaser be found the court shall, by
22 the appointment of a receiver or otherwise, exercise all juris-
23 diction necessary for the protection and administration or
24 disposition of the property and for the equitable execution
25 of this Act.

1 *"Sec. 9. That the grantee shall commence the con-*
2 *struction of the dam and accessory works within two years*
3 *from the date of the permit herein provided, and shall there-*
4 *after, in good faith and with due diligence, prosecute such*
5 *construction, and shall, within the further term of five years,*
6 *complete and put in commercial operation such part of the*
7 *ultimate development as the Secretary of War shall deem*
8 *necessary to supply the reasonable needs of the then available*
9 *market, and shall, from time to time thereafter, construct*
10 *such portion of the balance of such ultimate development as*
11 *said Secretary of War may direct and within the time*
12 *specified so as to supply adequately the reasonable mar-*
13 *ket demands until such ultimate development shall be com-*
14 *pleted; and extensions of the periods herein specified*
15 *may be granted by the Secretary of War when, in his*
16 *judgment, the public interest will be promoted thereby. In*
17 *case the grantee shall not commence actual construction*
18 *within the time herein prescribed, or as extended by the*
19 *Secretary of War, then the authority as to such grantee shall*
20 *terminate, and in case any dam or diversion structure and*
21 *accessory works be not completed within the time herein speci-*
22 *fied or extended as herein provided, then the Attorney General,*
23 *upon the request of the Secretary of War, shall institute*
24 *proper proceedings in the proper district court of the United*
25 *States for the revocation of said authority, the sale of the*

1 *works constructed, and such other equitable relief as the case*
2 *may demand, as provided for in section eight of this Act.*

3 *"Sec. 10. The Secretary of War may lease to any*
4 *applicant having the capacity of grantee as herein defined,*
5 *who has acquired and owns the right to use the water for*
6 *power and other purposes under the laws of the State in*
7 *which a dam is constructed or to be constructed by the United*
8 *States, the right to utilize the surplus water over and above*
9 *that required for navigation at any navigation dam now or*
10 *hereafter constructed, either with or without contribution by*
11 *the applicant, and owned by the United States, and on such*
12 *terms as may be deemed by the Secretary of War for the*
13 *best interests of the United States, and reasonable and fair*
14 *to both parties, and in awarding such lease preference shall*
15 *be given by the applicant whose plans are deemed by the Sec-*
16 *retary of War to be best adapted to conserve and utilize in*
17 *the public interest the navigation and water resources of the*
18 *region, and all such leases and the parties thereto and the*
19 *terms and conditions thereof shall be reported annually to*
20 *Congress. The charges and rents arising from such lease or*
21 *leases are hereby reserved and appropriated as a special fund*
22 *in the Treasury to be expended for the maintenance of said*
23 *dams and the further improvement of the waterway in which*
24 *the same may be situated under the direction of the Secretary*
25 *of War.*

1 *"Sec. 11. That this Act shall not affect the rights of any*
2 *person, company, or corporation as to the construction, main-*
3 *tenance, or operation of any structures heretofore constructed*
4 *or upon which construction has been begun, under permit or*
5 *approval of the Secretary of War and Chief of Engineers or*
6 *other authority heretofore lawfully granted: Provided, That*
7 *in the operation of any such structures and accessory works*
8 *the provisions of sections three, seven, eight, twelve, and thir-*
9 *teen of this Act shall apply to the same extent as if such struc-*
10 *tures had been authorized under this Act, and all conflicting*
11 *provisions relating to the operation of said structures and*
12 *accessory works contained in any authority heretofore law-*
13 *fully granted are hereby altered, amended, or repealed so*
14 *as to conform with the provisions of said sections three,*
15 *seven, eight, twelve, and thirteen of this Act: And provided*
16 *further, That upon application by any person, company, or*
17 *corporation having the capacity of grantee as herein defined,*
18 *which is now constructing or operating any structures herein*
19 *specified, across, in, or along any navigable waters of the*
20 *United States under authority heretofore lawfully granted,*
21 *the Secretary of War may issue to such applicant a permit in*
22 *accordance with the provisions of this Act, and in such a*
23 *case the provisions of this Act shall become extended to such*
24 *applicant as a grantee hereunder: Provided further, That the*

1 provisions of this Act shall not apply to irrigation or power
2 dams or grants to municipal corporations affecting the use
3 of water or water power for municipal purposes or to other
4 projects under the jurisdiction of the Secretary of the Interior
5 or the Secretary of Agriculture, upon the public lands of the
6 United States.

7 “Sec. 12. That the works constructed and maintained
8 under authority of this Act shall not be owned, leased,
9 trustee, possessed, controlled, or operated by any device or
10 in any manner so that they form part of or in any way effect
11 any combination in the form of an unlawful trust or mo-
12 nopoly, or form the subject of any unlawful contract or con-
13 spiracy to limit the output of electric energy or in restraint
14 of trade with foreign nations or between two or more States
15 or Territories, or within any one State or Territory, in the
16 generation, sale, or distribution of electric energy.

17 “Sec. 13. That the right to alter, amend, or repeal this
18 Act is hereby expressly reserved: Provided, That in case any
19 grantee hereunder shall, at the time of such alteration,
20 amendment, or repeal, have exercised rights in accordance
21 with this Act, such rights and the property used thereunder
22 shall be deemed property rights of such grantee, of which
23 such grantee shall not, until the time herein fixed for termi-
24 nation, be deprived by such alteration, amendment, or re-

- 1 *peal, and then only upon the conditions provided in case of*
- 2 *termination by section six of this Act."*

Passed the House of Representatives August 4, 1914.

Attest:

SOUTH TRIMBLE,

Clerk.

By D. K. HEMPSTEAD,

Enrolling Clerk.

APPENDIX D

Calendar No. 786

63D CONGRESS,
3D SESSION.

H. R. 16673

[Report No. 898.]

IN THE SENATE OF THE UNITED STATES.

AUGUST 25, 1914.

Read twice and referred to the Committee on Public Lands.

JANUARY 11, 1915.

Reported by Mr. MYERS, with amendments.

[Omit the part struck through and insert the part printed in italic.]

AN ACT

To provide for the development of water power and the use of public lands in relation thereto, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Secretary of the Interior be, and hereby is, author-
4 ized and ~~empowered~~ *directed*, under general regulations to be
5 fixed by him, and ~~under such terms and conditions as he may~~
6 *prescribe*, not inconsistent with the terms of this Act, to lease
7 to citizens of the United States, or to any association of such
8 persons, or to any corporation organized under the laws of the
9 United States, or any State or Territory thereof, any part
10 of the public lands of the United States (including Alaska),

1 reserved or unreserved, including lands in national forests,
2 the Grand Canyon and Mount Olympus national monu-
3 ments, and other reservations, not including national parks
4 or military reservations, for a period not longer than fifty
5 years of fifty years unless the applicant and the Secretary of
6 *the Interior agree on a shorter period as the applicant for lease*
7 *may elect*, for the purpose of constructing, maintaining and
8 operating dams, water conduits, reservoirs, power houses,
9 transmission lines, and other works necessary or convenient
10 to the development, generation, transmission, and utilization
11 of hydroelectric power, which leases shall be irrevocable ex-
12 cept as herein provided, but which may be declared null and
13 void upon breach of any of their terms: *Provided*, That such
14 leases shall be given within or through any of said national
15 forests or other reservations only upon a finding by the chief
16 officer of the department under whose supervision such forest,
17 national monument, or reservation falls that the lease will
18 not injure, destroy, or be inconsistent with the purpose for
19 which such forest, national monument, or reservation was
20 created or acquired: *Provided further*, that in the granting
21 of leases under this Act the Secretary of the Interior may,
22 in his discretion, give preference to applications for leases for
23 the development of electrical power by States, counties, or
24 municipalities, or for municipal uses and purposes: *Provided*
25 *further*, That for the purpose of enabling applicants for a

1 lease to secure the data required in connection therewith, the
2 Secretary of the Interior may, under general regulations to
3 be issued by him, grant preliminary permits authorizing the
4 occupation of lands valuable for water-power development
5 for a period not exceeding one year in any case, which time
6 may, however, upon application, be extended by the Secre-
7 tary of the Interior if the completion of the application for
8 lease has been prevented by unusual weather conditions or
9 by some special or peculiar cause beyond the control of the
10 permittee: *Provided, That no lease shall be granted until the*
11 *applicant has the right from the State or States wherein said*
12 *project is to be located, to sufficient water to develop or gen-*
13 *erate the electrical energy intended to be generated by appli-*
14 *cant's proposed project.*

15 SEC. 2. That each lease made in pursuance of this Act
16 shall provide for the diligent, orderly, and reasonable devel-
17 opment and continuous operation of the water power, subject
18 to market conditions, and ~~shall provide that the lessee shall~~
19 ~~at no time contract for the delivery to any one consumer of~~
20 ~~electrical energy in excess of fifty per centum of the total~~
21 ~~output.~~

22 SEC. 3. That in case of the development, generation,
23 transmission, ~~and~~ or use of power or energy under such a lease
24 in a Territory, or in two or more States, the regulation and
25 control of service and of charges for service to consumers and

1 of the issuance of stock and bonds by the lessee is hereby
 2 conferred upon the Secretary of the Interior or committed to
 3 such body as may be provided by Federal statute *Interstate*
 4 *Commerce Commission: Provided*, That the physical combi-
 5 nation of plants or lines for the generation, distribution, and
 6 use of power or energy under this Act or under leases given
 7 hereunder *not in violation of law* may be permitted, in
 8 the discretion of the Secretary of the Interior, but combina-
 9 tions, agreements, arrangements, or understandings, ex-
 10 press or implied, to limit the output of electrical energy,
 11 to restrain trade with foreign nations or between two or
 12 more States or within any one State, or to fix, maintain, or
 13 increase prices for electrical energy or service are hereby
 14 forbidden.

15 SEC. 4. That except upon the written consent of the
 16 Secretary of the Interior no sale or delivery of power shall
 17 be made to a distributing company, except in case of an
 18 emergency and then only for a period not exceeding thirty
 19 days, nor shall any lease issued under this Act be assignable
 20 or transferable without such written consent: *Provided, how-*
 21 *ever*, That no lessee under this Act shall create any lien
 22 upon ~~any power project~~ *the land leased* nor upon any power
 23 *project within a Territory, or intended for use in the genera-*
 24 *tion and transmission of water power or energy in two or*
 25 *more States* and developed under a permit issued under this

1 Act by mortgage or trust deed, except approved by the
2 ~~Secretary of the Interior Interstate Commerce Commission~~
3 and for the bona fide purpose of financing the ~~business of the~~
4 ~~lessee construction or operation of said project.~~ Any succes-
5 sor or assign of such property or project, whether by volun-
6 tary transfer, judicial sale, foreclosure sale, or otherwise, shall
7 be subject to all the conditions of the approval under which
8 such rights are held, and also subject to all the provisions
9 and conditions of this Act to the same extent as though such
10 successor or assign were the original lessee hereunder.

11 SEC. 5. ~~That upon not less than three years' notice,~~
12 ~~which may be issued at any time after three years immedi-~~
13 ~~ately prior to the expiration of any lease under this Act, the~~
14 ~~United States shall have the right to take over the properties~~
15 ~~which are dependent, in whole or in part, for their useful-~~
16 ~~ness on the continuance of the lease herein provided for,~~
17 ~~and which may have been acquired by any lessee acting~~
18 ~~under the provisions of this Act, upon condition that it shall~~
19 ~~pay, before taking possession, first, the actual costs of rights~~
20 ~~of way, water rights, lands, and interests therein purchased~~
21 ~~and used by the lessee in the generation and distribution of~~
22 ~~electrical energy under the lease, and, second, the reasonable~~
23 ~~value of all other property taken over, including struc-~~
24 ~~tures and fixtures acquired, erected, or placed upon the lands~~
25 ~~and included in the generation or distribution plant, and~~

1 ~~which are dependent as hereinabove set forth, such reason-~~
2 ~~able value to be determined by mutual agreement between~~
3 ~~the Secretary of the Interior and the lessee, and, in case~~
4 ~~they can not agree, by proceedings instituted in the United~~
5 ~~States district court for that purpose: *Provided, That such*~~
6 ~~reasonable value shall not include or be affected by the~~
7 ~~value of the franchise or good will or profits to be earned~~
8 ~~on pending contracts or any other intangible element. *That*~~
9 ~~*upon not less than three years' notice, which may be issued*~~
10 ~~*at any time after three years immediately prior to the ex-*~~
11 ~~*piration of any lease under this Act, the United States shall*~~
12 ~~*have the right to take over all the properties which are de-*~~
13 ~~*pendent in whole or in part for their usefulness on the con-*~~
14 ~~*tinuance of the lease herein provided for, which may have*~~
15 ~~*been acquired by any lessee under the provisions of this*~~
16 ~~*Act, or the right to take over, upon mutual agreement with*~~
17 ~~*the lessee, a severable and complete unit of any such power*~~
18 ~~*system, upon condition that it shall pay in a lawful warrant*~~
19 ~~*drawn on the Treasury of the United States, or otherwise, be-*~~
20 ~~*fore taking possession the fair value of such property, such*~~
21 ~~*value to be determined by mutual agreement between the Sec-*~~
22 ~~*retary of the Interior and the lessee, and, in case they can not*~~
23 ~~*agree, by proceedings instituted in the United States district*~~
24 ~~*court for that purpose: *Provided, That such fair value shall**~~
25 ~~*not include or be affected by the value of any public lands,*~~
26 ~~*rights of way, or other property leased or granted under this*~~

1 *Act by the United States or by the value of the franchise, good*
2 *will, value as a going concern, future profits from pending*
3 *contracts, or prospective revenues, profits, or dividends.*

4 SEC. 6. That in the event the United States does not
5 exercise its right to take over, maintain, and operate the
6 properties as provided in section five hereof, or does not
7 renew the lease to the original lessee upon such terms and
8 conditions and for such periods as may be authorized under
9 the then existing applicable laws, the Secretary of the Inte-
10 rior is authorized, upon the expiration of any lease under
11 this Act, to lease the properties of the original lessee to a
12 new lessee upon such terms, under such conditions, and
13 for such periods as applicable laws may then authorize, and
14 upon the further condition that the new lessee shall pay for
15 the properties as provided in section five of this Act. *In*
16 *the event the United States does not exercise its right to take*
17 *over the properties, as provided in section five, and a renewal*
18 *of the lease to the original lessee is not made, and no lease is*
19 *made of the properties to a new lessee, then the lease at the*
20 *option of the lessee shall continue in existence upon the terms*
21 *and conditions in force at the time fixed for its expiration*
22 *until such time as the property is taken over by the United*
23 *States, as provided in section five, or by a new lessee, as*
24 *provided in section six, or the lease is renewed: Provided,*
25 *That the original lessee shall have a preference right to*

1 *renewal over and above any new lessee upon such terms*
2 *and conditions as the law and regulations then in force shall*
3 *authorize.*

4 ~~SEC. 7. That where, in the judgment of the Secretary~~
5 ~~of the Interior, the public interest requires or justifies the~~
6 ~~execution by any lessee of contracts for the sale and delivery~~
7 ~~of electrical energy for periods extending beyond the life~~
8 ~~of the lease, but for not more than twenty years thereafter,~~
9 ~~such contracts may be entered into upon the approval of~~
10 ~~the said Secretary, and thereafter, in the event of the exer-~~
11 ~~cise by the United States of the option to take over the plant~~
12 ~~in the manner provided in sections five or six hereof, the~~
13 ~~United States or its new lessee shall assume and fulfill all~~
14 ~~such contracts entered into by the first lessee~~ *That where*
15 *the public interest requires or justifies the execution by the*
16 *lessee of contracts for the sale and delivery of electrical energy*
17 *for periods extending not to exceed twenty-five years beyond*
18 *the fifty-year period herein named, such contracts may be*
19 *entered into upon the approval of the Public Service Com-*
20 *mission or similar authority in the State in which the sale or*
21 *delivery of power is made, and upon the approval of the*
22 *Secretary of the Interior of the United States; or if sold or*
23 *delivered in a Territory or in a State without a regulating*
24 *authority, then upon the approval of the Secretary of the*
25 *Interior; and thereafter, in the event of the termination of the*

1 *lease as herein provided, the United States or any subsequent*
2 *lessee shall assume and fulfill all such contracts entered into*
3 *by the original lessee.*

4 SEC. 8. ~~That for the occupancy and use of lands and~~
5 ~~other property of the United States permitted under this~~
6 ~~Act the Secretary of the Interior is authorized to specify in~~
7 ~~the lease and to collect charges or rentals for all power~~
8 ~~developed and sold or used by the lessee for any purpose~~
9 ~~other than the operation of the plant, and the proceeds shall~~
10 ~~be paid into, reserved, and appropriated as a part of the~~
11 ~~reclamation fund created by the Act of Congress approved~~
12 ~~June seventeenth, nineteen hundred and two, known as~~
13 ~~the reclamation Act, and after use thereof in the construction~~
14 ~~of reclamation works and upon return to the reclamation~~
15 ~~fund of any such moneys in the manner provided by the ree-~~
16 ~~lamation Act and Acts amendatory thereof and supple-~~
17 ~~mental thereto, fifty per centum of the amounts so utilized in~~
18 ~~and returned to the reclamation fund shall be paid by the~~
19 ~~Secretary of the Treasury after the expiration of each fiscal~~
20 ~~year to the State within the boundaries of which the hydro-~~
21 ~~electric power or energy is generated and developed, said~~
22 ~~moneys to be used by such State for the support of public~~
23 ~~schools or other educational institutions or for the construc-~~
24 ~~tion of public improvements, or both, as the legislature of the~~

1 ~~State may direct: *Provided, That leases for the develop-*~~
2 ~~ment of power by municipal corporations solely for munici-~~
3 ~~pal use shall be issued without rental charge, and that leases~~
4 ~~for development of power not in excess of twenty-five horse-~~
5 ~~power may be issued to individuals or associations for do-~~
6 ~~mestic, mining or irrigation use without such charge. That~~
7 ~~for the occupancy and use of lands and other property of the~~
8 ~~United States permitted under this Act, the Secretary of the~~
9 ~~Interior is authorized to specify in the lease and to collect~~
10 ~~charges or rentals for all land leased, which charges or~~
11 ~~rentals may in the discretion of the Secretary be measured~~
12 ~~by the power developed and sold or used by the lessee for~~
13 ~~any purpose other than the operation of the plant, and of~~
14 ~~the proceeds fifty per centum thereof shall be paid by the~~
15 ~~Secretary of the Treasury after the expiration of each fiscal~~
16 ~~year to the State within which the hydroelectric energy is~~
17 ~~generated and developed. The remaining fifty per centum~~
18 ~~shall be paid into, reserved, and appropriated as a part of the~~
19 ~~reclamation fund created by the Act of Congress approved~~
20 ~~June seventeenth, nineteen hundred and two, known as the~~
21 ~~reclamation Act: *Provided, That if leases shall be made of*~~
22 ~~lands within Indian reservations the proceeds of charges or~~
23 ~~rentals of lands leased which are situated within Indian~~
24 ~~reservations shall be placed in the Treasury of the United~~
25 ~~States to the credit of the Indians of the reservation in which~~

1 *the lands so leased are situated: Provided further, That*
2 *leases for the development of power by municipal corpora-*
3 *tions for municipal use shall be issued without rental charge*
4 *and that leases for development of power not in excess of*
5 *twenty-five horsepower may be issued to individuals or asso-*
6 *ciations for domestic, mining, or irrigation use without*
7 *charge.*

8 SEC. 9. That in case of the development, generation,
9 transmission, or use of power or energy under a lease given
10 under this Act in a State which has not provided a commis-
11 sion or other authority having power to regulate rates and
12 service of electrical energy and the issuance of stock and
13 bonds by public-utility corporations engaged in power
14 development, transmission, and distribution, the control of
15 service and of charges for service to consumers and stock
16 and bond issues shall be vested in the Secretary of the
17 Interior or committed to such body as may be authorized by
18 Federal statute until such time as the State shall provide a
19 commission or other authority for such regulation and control.

20 SEC. 10. That where the Secretary of the Interior
21 shall determine that the value of any lands, heretofore or
22 hereafter reserved as water-power sites or for purposes in
23 connection with water-power development or electrical trans-
24 mission, will not be materially injured for such purposes by
25 either location, entry, or disposal, the same may be allowed

1 under applicable land laws upon the express condition that
2 all such locations, entries, or other methods of disposal shall
3 be subject to the sole right of the United States and its
4 authorized lessees to enter upon, occupy, and use any part
5 or all of such lands reasonably necessary for the accomplish-
6 ment of all purposes connected with the development, gen-
7 eration, transmission, or utilization of power or energy, and
8 all rights acquired in such lands shall be subject to a reserva-
9 tion of such sole right to the United States and its lessees,
10 which reservation shall be expressed in the patent or other
11 evidence of title: *Provided*, That locations, entries, selec-
12 tions, or filings heretofore allowed for lands reserved as
13 water-power sites or in connection with water-power devel-
14 opment or electrical transmission may proceed to approval
15 or patent under and subject to the limitations and conditions
16 in this section contained, but nothing herein shall be con-
17 strued to deny or abridge rights now granted by law to those
18 seeking to use the public lands for purposes of irrigation or
19 mining alone.

20 SEC. 11. That the Secretary of the Interior is hereby
21 authorized to examine books and accounts of lessees, and to
22 require them to submit statements, representations, or
23 reports, including information as to cost of water rights,
24 lands, easements, and other property acquired, production,
25 use, distribution, and sale of energy, all of which statements,

1 representations, or reports so required shall be upon oath,
2 unless otherwise specified, and in such form and upon such
3 blanks as the Secretary of the Interior may require; and
4 any person making any false statement, representation, or
5 report under oath shall be subject to punishment as for
6 perjury.

7 SEC. 12. That any such lease may be forfeited
8 and canceled, by appropriate proceedings, in a court of
9 competent jurisdiction whenever the lessee, after reasonable
10 notice, in writing, as prescribed in the lease, shall fail to
11 comply with the terms of this Act or with such conditions
12 not inconsistent herewith as may be specifically recited in the
13 lease.

14 SEC. 13. That the Secretary of the Interior is hereby
15 authorized to perform any and all acts and to make such
16 rules and regulations as may be necessary and proper for
17 the purpose of carrying the provisions of this Act into full
18 force and effect.

19 SEC. 14. That nothing in this Act shall be construed
20 as affecting or intended to affect or to in any way interfere
21 with the laws of any State relating to the control, appro-
22 priation, use, or distribution of water.

23 SEC. 15. That all Acts or parts of Acts providing for
24 the use of the lands of the United States for any of the pur-
25 poses to which this Act is applicable are hereby repealed

1 to the extent only of any conflict with this Act: *Provided,*
2 *however,* That the provisions of the Act of February fifteenth,
3 nineteen hundred and one (Thirty-first Statutes at Large,
4 page seven hundred and ninety), shall continue in full force
5 and effect as to lands within the Yosemite, Sequoia, and
6 General Grant National Parks in the State of California:
7 *And provided further,* That the provisions of this Act shall
8 not be construed as revoking or affecting any permits or
9 valid, existing rights of way heretofore given or granted pur-
10 suant to law, but at the option of the permittee any permit
11 heretofore given for the development, generation, transmis-
12 sion, or utilization of hydroelectric power may be sur-
13 rendered and the permittee given a lease for the same prem-
14 ises under the provisions of this Act.

15 SEC. 16. That this Act shall not apply to navigation
16 dams or structures under the jurisdiction of the Secretary
17 of War or Chief of Engineers, or to lands purchased or
18 acquired by condemnation by the United States, or with-
19 drawn by the President under the Act approved June
20 twenty-fifth, nineteen hundred and ten, entitled "An Act
21 to authorize the President of the United States to make with-
22 drawals of public lands in certain cases," where such lands
23 are purchased, acquired by condemnation, or withdrawn by
24 the President for the sole purpose of promoting navigation.

1 *Sec. 17. That in instances where only five per centum or*
2 *less of the lands actually necessary and required for the con-*
3 *struction, maintenance, and operation of dams, water con-*
4 *duits, reservoirs, power houses, transmission lines, and other*
5 *works for the development, generation, transmission, and*
6 *utilization of hydroelectric power in any one proposed sepa-*
7 *rate, distinct, and complete plant or project are lands of the*
8 *United States Government and such Government lands are*
9 *to be used only for overflowage, reservoir, or transmission*
10 *purposes and not in whole or in part as a dam site or the site*
11 *of a power house nor for the erection of buildings or opera-*
12 *tion of machinery, the Secretary of the Interior may, in his*
13 *discretion, lease such lands to an applicant for not more than*
14 *fifty years, at such rental price and upon such terms as he*
15 *may deem just, free from all or any other of the terms, con-*
16 *ditions, provisions, and requirements of this Act which the*
17 *Secretary of the Interior may see fit to waive.*

18 *Sec. 18. That authority is hereby conferred upon the*
19 *State of Colorado or any citizen or citizens directly interested,*
20 *or both, to institute and prosecute an action at law or in*
21 *equity against the Secretary of the Interior, or the Com-*
22 *missioner of the General Land Office, or both, to determine*
23 *its right and the rights of its citizens to appropriate and*
24 *apply to beneficial uses the waters of the Rio Grande River*
25 *and its tributaries within its geographical boundaries. Such*

1 *action may be instituted in the district court of the United*
2 *States within the State of Colorado, and any judgment or*
3 *decree therein shall be subject to review by writ of error or*
4 *appeal as provided by law in other cases.*

5 *Sec. 19. That authority is hereby conferred upon the*
6 *State of Nebraska or any citizen or citizens directly interested,*
7 *or both, to institute and prosecute an action at law or in*
8 *equity against the Secretary of the Interior or the Director*
9 *of the Reclamation Service, or both, to determine its right*
10 *and the rights of its citizens in and to the water of the North*
11 *Platte River stored by the Pathfinder Dam in the Pathfinder*
12 *Reservoir in the State of Wyoming. Such action may be*
13 *instituted in the district court of the United States within the*
14 *State of Nebraska, and any judgment or decree therein shall*
15 *be subject to review by writ of error or appeal as provided*
16 *by law in other cases.*

17 *Sec. 20. That the lands leased under this Act may be*
18 *used and the works constructed, maintained, and operated*
19 *thereon may be used, added to, or enlarged by the lessee*
20 *or any other person, association, or corporation, for the pur-*
21 *pose of impounding and conveying water for irrigation,*
22 *mining, municipal, domestic, and other beneficial purposes,*
23 *whenever such use of the water is authorized by the State*
24 *wherein said project is situated: Provided, however, That*
25 *if said lands and works are so used by any other than the*

- 1 *lessee, such use must be without expense or damage to the*
- 2 *said lessee.*

Passed the House of Representatives August 24, 1914.

Attest:

SOUTH TRIMBLE,

Clerk.

APPENDIX E

IN THE SENATE OF THE UNITED STATES.

DECEMBER 7, 1914.

Mr. JONES introduced the following bill, which was read twice
and referred to the Committee on Public Lands.

A BILL

To aid and to regulate the development, operation, and maintenance of water powers on lands of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That in order to utilize for the benefit of the public the
4 water-power resources dependent in whole or in part for
5 their proper development upon the use of public lands of
6 the United States (including Alaska), and in order to
7 prevent the unregulated monopoly of said water powers, and
8 for the purpose of developing, generating, transmitting,
9 and utilizing hydroelectric power, the right to construct,

1 develop, maintain, and operate dams, reservoirs, canals, con-
2 duits, pipe lines, tunnels, water-power or hydroelectric plants,
3 transmission and distributing lines, and all other appurtenant
4 constructions, structures, and appliances necessary or con-
5 venient for the development, generation, transmission, and
6 utilization of hydroelectric power on, over, under, and
7 across any part of the public lands of the United States
8 (including Alaska), reserved or unreserved, including na-
9 tional forests, national monuments, and Indian reservations,
10 is hereby granted, upon compliance with the conditions here-
11 inafter imposed, to any State or municipal subdivision
12 thereof or to any mutual or public-service corporation or-
13 ganized for the purpose, or to any person or persons author-
14 ized by the State or States in which any portion of such
15 dam, storage reservoir, water-power or hydroelectric plant,
16 or transmission or distributing lines may be located, to
17 engage in the business of furnishing water for domestic uses,
18 irrigation, transportation, or any other purpose, or light,
19 heat, power, or energy generated by electricity or other-
20 wise: *Provided*, That the State in which such lands may be
21 located shall have provided for the regulation and control of
22 mutual and public-service corporations and persons engag-
23 ing in such business. Such State, municipal subdivision,
24 mutual or public-service corporation, person or persons is
25 hereinafter referred to as the "grantee."

1 SEC. 2. That any grantee hereunder may construct,
2 develop, maintain, and operate dams, reservoirs, canals,
3 conduits, pipe lines, tunnels, water-power or hydroelectric
4 plants, transmission and distributing lines, and all other ap-
5 purtenant structures and appliances on, over, under, and
6 across any part of the public lands of the United States (in-
7 cluding Alaska), reserved or unreserved, including national
8 forests, national monuments, and Indian reservations, upon
9 filing with the Secretary of the department having jurisdic-
10 tion over such lands proof of its right to the use of water
11 and plans and specifications for such works, together with
12 such drawings of the proposed construction and such map of
13 the proposed location and flooded area as may be required
14 for a full understanding of the subject, which plans, speci-
15 fications and drawings shall be approved by such Secretary
16 if it appears to him that the proposed development will pro-
17 mote the highest and greatest practicable use of the water
18 resources involved. Within ninety days after the approval
19 of such plans, specifications, and drawings said grantee and
20 such Secretary shall agree upon the then fair market value
21 of the lands proposed to be occupied which are owned or
22 controlled by the United States, and in the event of their
23 failure to agree within such time, then such grantee shall
24 have the right to, and may, begin proceedings in the dis-
25 trict court of the United States for the district in which

1 such lands or any part thereof may be located for the
2 purpose of determining the then fair market value thereof.
3 Such district court is hereby given jurisdiction of said pro-
4 ceedings for such purpose, and service of process may
5 be had upon the clerk of said court, and upon such
6 service being made the Attorney General of the United
7 States shall enter his appearance for the United States.
8 Such proceedings shall be conducted according to the laws
9 and rules in force in said jurisdiction at said time for the
10 exercise of the right of eminent domain for public pur-
11 poses, with the right of appeal as in other cases. Upon
12 an agreement being reached as to the fair market value
13 of said land between said Secretary and the grantee, or
14 in the event of their failure to agree, then upon the
15 final adjudication of the value of said land the grantee
16 shall have the right to occupy the same for the pur-
17 poses above set forth for a period of fifty years after
18 such agreement or final adjudication, and after the expira-
19 tion of said period of fifty years such right shall continue
20 until terminated and compensation has been made to the
21 grantee for the fair value of its property, as herein pro-
22 vided. During the occupancy of said land by the grantee
23 it shall pay into the Treasury of the United States an-
24 nually, in advance, a sum equal to five per centum
25 upon the fair market value of such land as so deter-

1 mined by agreement or final adjudication, and the lia-
2 bility for such payment shall constitute a preferred claim
3 against all the assets of the grantee and may be collected by
4 suit brought in the name of the United States, and in the
5 event of the failure of the grantee to pay any judgment and
6 costs recovered in such suit, then such judgment may provide
7 for ejecting said grantee from said premises and for the
8 forfeiture of the grant.

9 SEC. 3. That in the acquisition of the property of the
10 grantee, as hereinafter provided, no value shall be claimed
11 by or allowed to the grantee for the use of or the right to
12 use the lands acquired under the terms of this Act.

13 SEC. 4. That where the public interest requires or jus-
14 tifies the execution by the grantee of contracts for the sale
15 and delivery of electrical energy for periods extending be-
16 yond the fifty-year period herein named, such contracts may
17 be entered into upon the approval of the Public Service Com-
18 mission or similar authority in the State in which the sale
19 or delivery of power is made, or if sold or delivered in a
20 Territory, then upon the approval of the authority under
21 which the grant is made, and thereafter, in the event of the
22 termination of the grant as herein provided, the United States
23 or any subsequent grantee shall assume and fulfill all such
24 contracts entered into by the original grantee.

1 SEC. 5. That Congress may, at any time, provide for
2 the termination of the right to occupy such land upon the
3 expiration of said fifty-year period, or at any time there-
4 after, and provide for the disposition of all the property of
5 the grantee dependent for its success upon the rights hereby
6 granted, which shall include the necessary appurtenant prop-
7 erty created or acquired and valuable or serviceable in the
8 distribution of water or in the generation, transmission, or
9 distribution of light, heat, power, or energy, upon the pay-
10 ment of fair compensation and upon the assumption of all
11 contracts entered into by said grantee which have the ap-
12 proval of the duly constituted public authority having juris-
13 diction thereof.

14 SEC. 6. That in order to prevent tying up, for specu-
15 lative purposes, any of the lands to be acquired under this
16 Act, the grantee shall commence the construction of the
17 project within two years from the date of the agreement, or
18 in the event of failure to agree then upon the date of final
19 adjudication, as to the value of the land to be occupied,
20 and shall thereafter, in good faith, continuously, and with
21 due diligence, prosecute such construction, and shall within
22 the further term of five years complete and put in commer-
23 cial operation such part of the ultimate development as the
24 Secretary or Secretaries of the department or departments
25 then having jurisdiction over such lands shall deem necessary

1 to supply the reasonable needs of the then available market,
2 and shall from time to time thereafter construct such por-
3 tion of the balance of such ultimate development as said
4 Secretary or Secretaries may direct and within the time
5 specified by said Secretary or Secretaries, so as to supply
6 adequately the reasonable market demands until such ulti-
7 mate development shall be completed, and no extensions of
8 the periods herein specified shall be granted except by the
9 President, and then only when, in his judgment, the public
10 interest will be promoted thereby.

11 SEC. 7. That rates charged by all grantees under this
12 Act shall be reasonable and the service and operation shall
13 be adequate and efficient, and all such grantees shall be
14 subject to lawful regulation in the public interest as to
15 rates and otherwise by the respective States having juris-
16 diction thereof: *Provided, however,* That the United States
17 reserves the right to regulate rates and service to the con-
18 sumer to the extent that the business of the grantee may be
19 or shall become interstate.

20 SEC. 8. That the provisions of this Act shall apply to
21 all grantees herein designated who, under existing laws or
22 by the terms of an agreement or agreements heretofore
23 entered into with the Department of the Interior or the
24 Department of Agriculture, may have constructed, or have
25 under construction, dams, reservoirs, canals, conduits, pipe

1 lines, tunnels, water-power or hydroelectric plants, trans-
2 mission or distributing lines, and appurtenant structures and
3 appliances, on, over, under, or across any part of the public
4 lands of the United States, reserved or unreserved, as defined
5 in section one of this Act, and said grantee shall have the
6 right to have the then fair market value of the lands so occu-
7 pied and used determined, as in said section two provided,
8 and shall thereupon be entitled to all the rights, privileges,
9 and benefits of this Act, and subject to its terms and pro-
10 visions. Upon a determination of the fair market value of
11 said land, by and between the Secretary of the department
12 having jurisdiction over such lands and the grantee, or, in
13 the event of their failure to agree, then upon the final adjudi-
14 cation of the value of said lands, as provided in section two
15 of this Act, and upon such modification of its plans and speci-
16 fications for development as the Secretary may deem neces-
17 sary to promote by such proposed development the highest
18 and greatest practical use of the water resources involved,
19 such grantee shall have the right to ask, demand, and receive
20 the cancellation of any and all agreements theretofore made
21 with the Department of the Interior or the Department of
22 Agriculture having reference to any of the rights of way or
23 lands of the United States so occupied or used, and upon
24 the payment by said grantee into the Treasury of the United
25 States of the first annual payment for the use of said lands,

1 as herein provided, all such agreement or agreements shall
2 be canceled and annulled and be of no further force or effect.

3 SEC. 9. That all water-power reserves may be opened
4 by the President to location, settlement, entry, and disposal
5 under the appropriate public-land laws, so far as the same
6 will not impair, prejudice, or destroy the use of the land for
7 water-power development, generation, transmission, or
8 utilization, it being the intent of this section that so far as
9 possible lands available and necessary for water power and
10 for other purposes shall be used for all purposes, the water
11 power, however, being the dominant use, which reservation
12 shall be expressed in all patents issued for such land.

13 SEC. 10. That the works constructed and maintained
14 under authority of this Act shall not be owned, leased,
15 trusted, possessed, or controlled by any device or in any
16 manner so that they form a part of or in any way affect any
17 combination in the form of an unlawful trust, or form the
18 subject of any contract or conspiracy to limit the output of
19 electric energy or in restraint of trade with foreign nations
20 or between two or more States or Territories in the genera-
21 tion, sale, or distribution of electric energy.

22 SEC. 11. That any grant made hereunder may be
23 forfeited and canceled before the expiration of the fifty-year
24 period herein named, by appropriate proceedings in a court

1 of competent jurisdiction, whenever the grantee shall fail to
2 comply with the terms of this Act.

3 SEC. 12. That the Secretary having control and juris-
4 diction over any lands subject to the provisions of this Act
5 may make such rules and regulations as may be necessary
6 and proper for the purpose of carrying out the provisions
7 of this Act in relation to the lands under his control and
8 jurisdiction.

9 SEC. 13. That the provisions of section one of this Act
10 defining the qualifications necessary for a grantee hereunder
11 shall not apply to any water-power developments or pro-
12 posals for development of a capacity of one thousand horse-
13 power or less, and in such cases the benefits of this Act shall
14 extend to any person, corporation, or association of persons
15 which shall comply with the other terms and requirements
16 hereof.

17 SEC. 14. That all Acts and parts of Acts inconsistent
18 with this Act are hereby repealed, and the right to alter,
19 amend, or repeal this Act is hereby expressly reserved:
20 *Provided*, That in case any grantee hereunder shall, at the
21 time of such alteration, amendment, or repeal, have exercised
22 rights in accordance with this Act, such rights and property
23 used thereunder shall be deemed property rights of such
24 grantee, of which such grantee shall not until the time herein

1 fixed for termination be deprived by such alteration, amend-
2 ment, or repeal, and then only upon the conditions provided
3 in case of termination by section five of this Act.

APPENDIX F

IN THE SENATE OF THE UNITED STATES.

DECEMBER 29, 1914.

Mr. WORKS introduced the following bill; which was read twice
and referred to the Committee on Public Lands.

A BILL

To provide for the disposition of the public lands for the supply
of water for irrigation and the generation of power.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That subject to the limitation and provisions in this Act
4 contained, the right of way is hereby granted to construct,
5 develop, maintain, and operate all necessary or convenient
6 dams, reservoirs, canals, conduits, pipe lines, tunnels, trans-
7 mission lines, roads, power houses, and all other works or
8 structures necessary or convenient for the appropriation and
9 beneficial use of water and the power or other products
10 generated thereby and for the utilization and beneficial use
11 of the same on, over, under, and across any part of the

1 public lands of the United States (including Alaska) re-
2 served or unreserved, including national forests, national
3 monuments, and Indian reservations, to any State or munic-
4 pal subdivision thereof, or to any mutual or public-service
5 corporation organized for the purpose or to any person or
6 persons authorized by the State or States in which any
7 portion of such works, structures, or appurtenances are situ-
8 ated: *Provided*, That as to any such rights or uses that are
9 located within any national monuments or Indian reserva-
10 tions the same shall be located subject to the approval of and
11 under the direction of the Secretary of the Interior, and in
12 such a way as not to interfere with said national monuments
13 or Indian reservations or the uses or purposes for which the
14 same are created.

15 SEC. 2. That any applicant for a grant hereunder may
16 file with the Secretary of the Interior, or of the department
17 having jurisdiction of such lands, proof of his right to the
18 appropriation or use of water, together with plans and speci-
19 fications for such works, together with such maps and draw-
20 ings of the proposed canals, works, reservoirs, and other
21 structures as may be required for the full understanding of
22 the same, which plans and specifications and drawings shall
23 be approved by the Secretary, subject to the laws of the
24 State with respect to and controlling the appropriation and
25 beneficial use of water for the purposes for which the same

1 is being appropriated. If said proposed canals, works,
2 reservoirs, or other structures are located within any national
3 monument or Indian reservation, no work upon or in con-
4 nection therewith shall be commenced or proceeded with
5 until the location of the same is approved by the Secretary
6 of the department having jurisdiction thereof, as herein-
7 before in this Act provided, and, if within a forest reserve,
8 may be required to be so located as not unnecessarily to
9 interfere with the purposes for which such reserve is created:
10 *Provided*, That no grant shall be made under this Act until
11 the applicant shall have obtained and filed with the officer
12 to whom the application is made a certificate from the State
13 board, commission, or other body or officer having jurisdic-
14 tion over the use of the waters of the streams of the State
15 that such applicant has the lawful right to divert and use the
16 water for the purpose or purposes for which the applica-
17 tion is made. If no such body or officer exists in any State,
18 then the officer to whom such application is made shall, in
19 case of conflict, make the grant to the person having the
20 legal right to the use of the water: *Provided further*, That
21 within ninety days after the approval of such plans, speci-
22 fications, and drawings said grantee and said Secretary shall
23 agree upon the then fair market value of the lands proposed
24 to be occupied or used and which are owned or controlled
25 by the United States; and, in the event of their failure to

1 agree within such time, then such grantee shall have the
2 right to and may bring proceedings in the district court of
3 the United States for the district in which such lands are
4 situated, or in which any part thereof may be located, for
5 the purpose of determining the then fair market value
6 thereof. Such district court is hereby given jurisdiction of
7 such proceedings for such purpose and service of process may
8 be had on the clerk of said court, and, upon service being
9 made and within thirty days thereafter, the Attorney General
10 of the United States shall enter his appearance for the
11 United States. Such proceedings shall be conducted ac-
12 cording to the laws and rules in force in such jurisdiction
13 at such time for the exercise of the right of eminent domain
14 for public purposes, with the right of appeal as in other
15 cases. Upon an agreement being reached as to the fair
16 market value of said land between said Secretary and the
17 grantee, or, in the event of failure so to agree, then upon
18 the bringing of such action in said court of the United States
19 and upon the giving of a sufficient bond by the grantee,
20 required and conditioned upon his complying with the order
21 and judgment of the court and approved by the court, or
22 upon the final adjudication of the value of said land, the
23 grantee shall have the right to occupy the same for the
24 purposes above set forth so long as and during such period
25 or periods of time thereafter as the said grantee, its suc-

cessors or assigns, shall be possessed of the right of appropriation and beneficial use of the waters appropriated and used in connection with said rights of way: *And provided further*, That if, and whenever, the right of appropriation and beneficial use of said waters and the right to use and enjoy the products thereof shall be assigned, transferred, conveyed, forfeited to, or vested in any other corporation or person or State or municipal subdivision thereof, then and thereupon the rights of way and all of the rights and privileges hereby granted to the grantee shall belong to and shall be vested in such successor in interest or right of the grantee or its successors or assigns, so that said right of way shall continue with, appertain to, and shall be used and enjoyed only by the grantee or its successors in interest, or in any State or municipal subdivision thereof having the right or being charged with the duty of appropriation and beneficial use of the waters diverted and used in connection with the rights of way so granted, and having the right to engage in and being charged with the duty of carrying on the service connected with the appropriation and beneficial use of said water or the electric power or products generated thereby or produced therefrom.

SEC. 3. That in arriving at the fair market value of such land the parties, or, in case of disagreement, the court, shall take into account the enhanced value of said land for

1 power plant or reservoir or other special purpose or
2 purposes.

3 SEC. 4. That in the event of the acquisition of the
4 property of the grantee, including or connected with the
5 rights and privileges obtained under this Act, under the
6 authority of the United States, or by or under the authority
7 of any State or municipal subdivision thereof, the grantee
8 shall not be entitled to claim or receive any compensation
9 or value or in connection with any of the rights obtained or
10 used under the provisions of this Act. And the grantee
11 and its successors in interest shall not be entitled, in the
12 fixing of any rates by competent public authority, or by
13 any State or legal subdivision thereof, to have or receive
14 any allowance or earnings on account of any of the rights,
15 uses, or privileges granted or received under this Act,
16 except such amounts, if any, as have been paid for the uses
17 and privileges hereby granted and allowed.

18 SEC. 5. That the grantee shall commence the construc-
19 tion of the proposed works within one year from the date
20 of the agreement or final adjudication, or the approval of
21 the bond, as in this Act provided for, and shall thereafter,
22 in good faith, continuously and with due diligence prosecute
23 such construction, and shall within the further term of five
24 years complete and put in commercial operation such de-
25 velopment or such substantial part or portion thereof, as

1 the public needs shall demand, and shall complete and put
2 in operation said entire development with due and reason-
3 able diligence: *Provided*, That the rights of such grantee,
4 its successors or assigns, shall not be forfeited or terminated
5 so long as the grantee, his successors or assigns, remain
6 vested with the right or duty to appropriate and beneficially
7 use the waters or products thereof to be appropriated and
8 used upon or in connection with said rights of way and
9 shall be duly and reasonably exercising that right and duty:
10 *Provided, however*, That whenever the rights of the grantee,
11 its successors or assigns, are lost, forfeited, or transferred
12 so that the water or the products thereof can not be appro-
13 priated or used upon or in connection with said rights of
14 way, then and thereupon such rights of way or the parts or
15 portions thereof which can not be so used or enjoyed shall
16 revert to and be revested in the Government of the United
17 States, or in the successor in interest of the said grantee
18 entitled to and having the right to appropriate or bene-
19 ficially use said waters or the products thereof: *Pro-*
20 *vided further*, That whenever the right to use the waters
21 of the stream for the purposes of the grant shall be forfeited
22 or otherwise terminated by the State wherein the land is
23 situated or by final adjudication of the courts, then all the
24 rights under the grant shall cease and terminate and the
25 land revert to the United States.

1 SEC. 6. That the rates and service of the grantee, its
2 successors and assigns, shall be subject to regulation and
3 control under the Constitution and laws of the United States
4 and under the constitution and laws of the State or States
5 within which the same are situated or used, and, in the
6 event of forfeiture of any of the rights, privileges, or prop-
7 erties of the grantee, its successors or assigns, by reason or on
8 account of the violation of any law of the United States or
9 of any State, the rights hereby granted shall be forfeited
10 therewith and shall revert to or be vested in the State or
11 States, or municipal subdivisions thereof, or corporations or
12 person or persons in whom the right or duty of appropria-
13 tion and beneficial use of said waters or the products thereof
14 shall be vested, and, in such event, without compensation to
15 the grantee, its successors, or assigns, for or in connection
16 with any of the rights, uses, or privileges obtained, granted,
17 or received under this Act.

18 SEC. 7. That rates and charges for power, or water
19 furnished for irrigation or other use, shall be fixed and de-
20 termined by the State in which the same is supplied: *Pro-*
21 *vided*, That where the power plant or reservoir site acquired
22 under this Act is in one State and power or water is supplied
23 in another State any person supplied therewith in the latter
24 State may apply to the Interstate Commerce Commission,

1 or other body authorized by Act of Congress, to fix such
2 rates and charges for power or water supplied in such State.

3 SEC. 8. That any qualified grantee or grantees under
4 the terms of this Act engaged in the appropriation and
5 beneficial use of water or the products thereof, as in this Act
6 set forth under revocable permits or otherwise may come
7 under and avail themselves of the privileges of this Act
8 upon application to the head of the department having juris-
9 diction of the administration of this Act and, upon such
10 application and the filing of the required plans, specifica-
11 tions, maps, and other data required, such qualified grantee
12 shall come under and have and enjoy and be subject to all
13 of the terms, rights, grants, conditions, limitations, and pro-
14 visions of this Act, upon compliance with its terms, as herein
15 provided: *Provided*, That if any of its works or structures
16 are in course of construction, or completion, at the time of
17 so coming under the provisions of this Act, the same shall
18 be considered completed, used, operated, and enjoyed wholly
19 under and in accordance with the terms and provisions and
20 limitations of this Act and as though originally authorized,
21 granted, and constructed hereunder, and such grantee shall
22 and may have the value of the rights and properties used
23 and enjoyed under the terms of this Act agreed upon or
24 adjudicated and valued as in this Act provided, and there-

1 after shall make payments to the Government of the United
2 States in accordance with the terms of this Act: *Provided,*
3 *also,* That in the event of the rights and privileges of the
4 grantee in connection with any existing uses or permits being
5 brought under this Act, thereupon and in connection there-
6 with all of the other existing permits, rights, privileges, or
7 claims of the grantee as to the rights and property so brought
8 under this Act shall be surrendered, canceled, nullified, and
9 at an end, and the sole rights of the United States and the
10 grantee as to such property shall be under and in accordance
11 with this Act.

12 SEC. 9. That the Secretary of the Interior, or other
13 Secretary having jurisdiction and control over any lands sub-
14 ject to the provisions of this Act, shall make such rules and
15 regulations as may be necessary and appropriate and for the
16 purposes of and having the effect of carrying out the provi-
17 sions of this Act.

18 SEC. 10. That the rights and privileges herein granted
19 may be transferred, assigned, conveyed, mortgaged, or
20 otherwise disposed of by the grantee, but only under and in
21 accordance with and subject to the provisions of this Act
22 and under and in accordance with the laws of the United
23 States and of any State or States within which such said
24 works are situated and any assignee or successor in interest

1 of the grantee hereunder shall be subject to all of the terms
2 and conditions of this Act and to the laws of the United
3 States and of the State or States within which said property
4 or works are situated in all respects and to the same extent
5 as the original grantee hereunder.

6 SEC. 11. That the United States shall at all times have
7 the right to reserve, sell, assign, lease, transfer, or otherwise
8 dispose of all or any part of the lands or the products thereof
9 upon, over, or in connection with which the rights, privi-
10 leges, structures, and uses hereunder provided for are situ-
11 ated, subject to all of the rights of way, uses, occupancies,
12 and privileges hereunder granted, including the right to all
13 necessary means of ingress and egress used or reasonably
14 required in the use and enjoyment of the rights and privileges
15 granted hereunder.

16 SEC. 12. That nothing in this Act shall be construed
17 as affecting or intended to affect, or to in any way interfere
18 with the laws of any State relating to the control, appropri-
19 ation, use, or distribution of water.

20 SEC. 13. That all Acts and parts of Acts inconsistent
21 with this Act are hereby repealed, and the right to alter,
22 amend, or repeal this Act is hereby expressly reserved:
23 *Provided*, That in case any grantee hereunder shall, at the
24 time of such alteration, amendment, or repeal, have exercised
25 rights in accordance with this Act, such rights and property

1 used thereunder shall be deemed property rights of such
2 grantee, of which such grantee shall not be deprived by such
3 alteration, amendment, or repeal, and only upon the con-
4 ditions provided in this Act.

APPENDIX G

IN THE SENATE OF THE UNITED STATES.

DECEMBER 29 (calendar day, DECEMBER 31), 1914.

Mr. SMOOT introduced the following bill; which was read twice
and referred to the Committee on Public Lands.

A BILL

Providing for the acquisition by a State, under certain conditions,
of any lands therein which are or may become chiefly valu-
able for the development of water power.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That in the manner and subject to the limitations herein pre-
4 scribed, a State may enter and acquire title to lands within
5 said State which are or may become chiefly valuable for the
6 development of water power.

7 SEC. 2. That any State desiring to avail itself of the pro-
8 visions of this act shall make application therefor in the
9 manner following:

1 Such State shall, through its regularly created board,
2 commission, or other regularly constituted public authority
3 of said State duly vested with the power to regulate and
4 control the rates and service of public utility corporations,
5 including authority to regulate the rates and service of any
6 person, persons, associations, or corporations engaged in
7 the business of developing, distributing, furnishing, selling,
8 and renting electric power, file with the Secretary of the
9 Interior an application setting forth the description of the
10 lands sought to be acquired, accompanied by a map or plat
11 thereof, together with proof that the lands described are
12 chiefly valuable for the development of water power, that
13 the entire area of the land described is necessary to accom-
14 plish development of the largest available power at the
15 place designated, and that said application is made for the
16 development of water power in accordance with the pro-
17 visions of this Act.

18 SEC. 3. That such State shall submit proof with such
19 application establishing that the lands described are chiefly
20 valuable for the development of water power and are neces-
21 sary therefor and are being sought for that purpose, and upon
22 such matters and facts being established, patent therefor or
23 for such portion thereof as is necessary for the purpose afore-
24 said shall issue as hereinbefore provided to such State. Such
25 patent shall include such lands or all portions thereof as are

1 chiefly valuable for the development of water power and are
2 necessary therefor, including all necessary or convenient
3 dams, reservoirs, canals, conduits, pipe lines, tunnels, trans-
4 mission lines, roads, power houses, and all other works or
5 structures necessary or convenient for the appropriation and
6 beneficial use of water and the power or other products gen-
7 erated thereby and for the utilization and beneficial use of the
8 same.

9 SEC. 4. That the provisions of this Act, where appli-
10 cation is made by the duly constituted authority of the
11 State, as hereinbefore set forth, shall apply to any part of
12 the public lands of the United States, reserved or unre-
13 served, including national forests, national monuments, and
14 Indian reservations: *Provided*, That where such lands are
15 located within any national monuments or Indian reserva-
16 tions, the same shall be located under the direction of the
17 Secretary of the Interior and in such a way as not to inter-
18 fere with such national monuments or Indian reservations
19 or the uses or purposes for which the same are created.

20 SEC. 5. That such patent issued under the provisions of
21 this Act shall contain and be subject to the following con-
22 ditions, limitations, and restrictions, to wit:

23 First. That said State or Territory shall not alienate
24 the fee simple title to said lands and shall retain the same
25 for the uses and purposes in this Act set forth, granting

1 the use thereof for such purposes and subject to the laws
2 of said State and the United States applicable to and adopted
3 for the purpose of controlling and regulating such business
4 and the charges and services thereof so that the State, or
5 those authorized under its laws to appropriate and bene-
6 ficially use such waters, will carry on and continue the
7 service of generating and distributing such electric power.

8 Second. That each tract of land so patented shall be
9 held by said State and devoted primarily to the development
10 of water power either by said State or Territory or by a
11 municipal corporation or corporations therein or by some
12 person or persons, association or associations, corporation or
13 corporations thereto duly authorized and that said State or
14 Territory shall not devote or permit the same to be devoted
15 to any other purpose or purposes in conflict therewith.

16 Third. That all power generated, sold, rented, or dis-
17 tributed under authority of said State by any person or per-
18 sons, association or associations, corporation or corporations,
19 and the rates therefor and the service therefor shall at all
20 times be subject to and shall be regulated and fixed by and
21 under the authority and laws of said State, or in cases in-
22 volving interstate commerce under and pursuant to the laws
23 of the United States, and that such power so generated shall
24 never be the subject of any combination or consolidation in

1 restraint of trade contrary to or in violation of any law of
2 said State or applicable law of the United States.

3 Fourth. That none of the properties, rights, uses, or
4 privileges patented under the provisions of this Act, where
5 the same are assigned or transferred to or permitted to be
6 used or enjoyed under the provisions of this Act, shall ever
7 be valued or allowed to be charged for in connection with
8 any service to the public in excess of such amounts, if any,
9 as the person or persons, association or associations, corpora-
10 tion or corporations shall have actually paid for the same,
11 and in the event of the acquisition of such property, rights,
12 uses, or privileges by such State or any municipality or sub-
13 division thereof, no amount whatever shall be allowed or
14 paid by said State, municipality, or subdivision thereof for
15 such transfer or acquisition in excess of such amounts, if
16 any, as shall have been paid therefor and which shall not
17 have been repaid or reimbursed prior to such acquisition
18 of the same.

19 SEC. 6. That upon any sale or disposition or attempted
20 sale or disposition of such lands by any State for any other
21 purpose or in any other manner than as herein provided, or
22 upon failure to require said lands to be devoted to the uses
23 required by this Act, or upon any violation of the provisions
24 of this Act, or of the patent to be issued hereunder, the same
25 shall be forfeited to the United States, and the Attorney

1 General, upon the direction of the President of the United
2 States, is authorized to institute such judicial proceedings as
3 may be necessary for the purpose of ascertaining, declaring,
4 and enforcing such forfeiture.

5 SEC. 7. That the Secretary of the Interior shall make
6 such rules and regulations as may be necessary and appro-
7 priate for the purpose of and having the effect of carrying
8 out the provisions of this act.

9 SEC. 8. That nothing in this act contained shall be con-
10 strued as affecting or intended to affect or to in any way
11 interfere with the laws of said State relating to the control,
12 appropriation, use, or disposition of water or the right or
13 priority of right to the use of the same now or hereafter
14 vested under and in accordance with the laws of said State.

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